SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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a District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.	In Equity, No. 301.

ABSTRACT OF THE EVIDENCE BEFORE THE COURT.

Before Putnam, Dodge, and Brown, JJ.

1 Evidence for the United States before the Court May 21, 1913, June 27, 1913.

Appearances.

For the United States: James A. Fowler, assistant to the Attorney General; William S. Gregg, special assistant to the Attorney General; Allen Webster, special assistant to the Attorney General; Asa P. French, United States attorney for the District of Massachusetts; Edwin H. Abbott, jr., special assistant to the United States attorney.

(After the decision in the District Court): Constantine J. Smyth, H. La Rue Brown, special assistants to the Attorney General.

For the defendants: Frederick P. Fish; Charles F. Choate, jr.; Walter Bates Farr; H. G. Donham; Malcolm Donald; L. R. Chamberlin.

MAY 21, 1913.

HAROLD GREGORY DONHAM, witness for the United States.

2 My name is Harold Gregory Donham. I reside in Medford, Mass. I have been connected with the law department of the United Shoe Machinery Company since 1900, and have been secretary of the company about two years. I am familiar with the operations of the company and with its business.

The United Shoe Machinery Company was organized in February, 1899.

(Certified copy of the articles of incorporation of the United Shoe Machinery Company is marked "Plaintiff's Exhibit 1.")

The United Shoe Machinery Corporation was organized in 1905.

(Certified copy of the articles of incorporation of the United Shoe Machinery Corporation is marked "Plaintiff's Exhibit 2.")

Three principal companies were brought together to form the United Company. They were the McKay Shoe Machinery Com-

pany, the Goodyear Shoe Machinery Company, and the Consolidated & McKay Lasting Machine Company.

Several other companies were acquired within a year after the formation of the United Company. Without a list before me I can not recall what those companies were, but among them were the Davey Pegging Machine Company and the Gem Insole Company. Shortly after the formation of the United Company that company acquired the stock or the assets of the Eppler Welt Machine Company.

The Goodyear Company was engaged in the business of manufacturing and leasing to shoe manufacturers machines for making the kind of shoes known as "Goodyear" shoes. It manufactured two principal machines, one known as the "Goodyear welt and turn shoe machine," and the other known as the "Goodyear outsole rapid lock stitch machine," the two machines used for uniting the sole of a Goodyear welt shoe. It also had sixteen or seventeen auxiliary machines for preparing footwear for the operation of those principal machines.

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It also had a specially designed lasting machine, which it had originated for the purpose of enabling women's Goodyear welt shoes to be lasted by machine, there being at that time no other lasting machine adapted for lasting that class of work.

I believe the International Goodyear Shoe Machinery Company was the foreign branch of the Goodyear Company and did business abroad. I am not familiar with that. The Goodyear Shoe Machinery Company of Canada did business in Canada on the same lines that the Goodyear Company did in the United States. The capital stock of the Goodyear Company was three million dollars.

The Goodyear Company did not sell its machines, but put them out on lease. It leased them only. I produce three forms of lease used by the Goodyear Company just prior to the organization of the United Company. The first is a form which was used where machines were leased for manufacturing turn shoes. It covered the "turn set," consisting of one sewing machine and certain auxiliaries for turn work. Prior to the organization of the United Company the Goodyear Company made machines used for the manufacture of turn shoes as well as welt shoes.

(This form of lease used by the Goodyear Company, covering the Goodyear "turn set," is marked "Plaintiff's Exhibit 3.")

The second form of lease was used by the Goodyear Company when its machines were put out for manufacturing welt shoes. This is the "full set" lease, and covers the welt sewing machine for making the inner seam, the outsole stitching machine for attaching the outsole, and some sixteen or seventeen auxiliary

machines used for preparing the work for or finishing the work after the operations of the welting and stitching machines.

(Form of "full set" lease used by the Goodyear Shoe Machinery Company is marked "Plaintiff's Exhibit 4.")

The third form of lease of the Goodyear Company was used when it put out its lasting machine, known as the Ideal lasting machine. This lease limits the use of the machine to the manufacture of welt shoes, for which alone it was designed and adapted.

(Form of lease of Goodyear Shoe Machinery Company for lasting machines is marked "Plaintiff's Exhibit 5.")

These were the only forms of lease used by the Goodyear Company at the time of the formation of the United Company and for some little time prior to that.

The Consolidated & McKay Lasting Machine Company was engaged in business throughout the United States. Its capital was $2,888,600. Its factory was at Beverly, Massachusetts. It manufactured three types of lasting machines, each adapted for a special kind of work.

The first type was the McKay & Copeland lasting machine, adapted for lasting heavy weight brogans and metallic fastened and pegged goods. I produce a copy of a form of lease used by Consolidated & McKay Company to cover that machine. This particular copy is dated subsequently to the formation of the United Company, and the name of the United Company is substituted on the lease; but it is exactly the same form which was used before the United Company was formed.

(This form of lease is marked "Plaintiff's Exhibit 6.")

The Consolidated & McKay Company also manufactured and leased the Chase lasting machine, used for lasting light metallic fastened and pegged goods and also for lasting men's welt shoes. I produce the form of lease which was used by the Consolidated & McKay Company, prior to the formation of the United Company, for the Chase lasting machine.

(Form of lease used by the Consolidated & McKay Company covering the Chase lasting machine is marked "Plaintiff's Exhibit 7.")

The Consolidated & McKay Company also manufactured and leased the "Consolidated hand method lasting machine." It was offered on two forms of lease, one of which required an initial license payment, and a royalty of a half cent per pair. The alternative form required no initial payment; in this case the royalty was five-eighths cent per pair. The lease, without initial payment, includes provisions for the

protection of the lessor, which are not included in the lease with initial payment. I produce copies of these two forms.

(Initial payment form of lease used by the Consolidated & McKay Company for Consolidated hand method lasting machine is marked "Plaintiff's Exhibit 8.")

(Alternative form of lease used by the Consolidated & McKay Company for the Consolidated hand method lasting machine is marked "Plaintiff's Exhibit 9.")

In 1898 and 1899 the Consolidated & McKay Company was developing a new type of its hand method lasting machine. It was put out on a lease without initial payment, but at a royalty of one per cent per pair of shoes operated upon. I produce a copy of this form of lease, of which a very few were actually used.

(Form of lease used by the Consolidated & McKay Company for new type of hand method machine is marked "Plaintiff's Exhibit 10.")

These were all the forms of lease used by the Consolidated & McKay Company at the time of the formation of the United Company, or for some time prior to that. The Consolidated & McKay Company manufactured no other machines except these lasting machines. It never sold any of its machines, but put them out only on leases.

The business of the McKay Shoe Machinery Company related to metallic fastening machines, used to insert metallic fastenings, consisting of either wire nails or slugs, and heeling machines, which are machines having to do with the preparation and attaching of heels. It manufactured no other kinds of machines. The McKay Company did not sell nor offer for sale any of its machines, but put them out on leases only.

The McKay Company did not lease its machines in its own name. The leasing of the heeling department machines was done in the name of the McKay-Bigelow Heeling Machine Association, and the leasing of the metallic department machines was done in the name of the McKay Metallic Fastening Association. The McKay Company owned the entire stock of both associations. Its capital stock was $5,000,000.

6 I produce a form of lease used by the McKay Company prior to the formation of the United Company for heeling machines.

(Form of lease used by the McKay Shoe Machinery Company for heeling machines is marked "Plaintiff's Exhibit 11.")

The McKay Company had for years been in the practice of putting out its metallic machines upon lease, but about a year or two before the formation of the United Company ceased to use the leases and loaned its machines, subject to an agreement

relative to the subsequent signing of leases. No form of lease was current as a metallic machine lease at the time of the formation of the United Company. I produce a copy of a form of lease which was used as late as 1897.

The metallic machines had originally been put out entirely on the initial payment basis, and the only printed form of lease which the McKay Company had for its metallic machines was the initial payment form of lease. Some time prior to 1897, in its effort to do away with initial payments, the company attached to its initial payment form of lease what was referred to as a "memorandum of modification," which eliminated the initial payment and inserted certain provisions which the lessors felt they must have if they were not to obtain the initial payment. The form of lease which I produce is the old initial payment form of lease with the "memorandum of modification" attached, changing it over into the loan form.

(Form of lease used by the McKay Shoe Machinery Company covering metallic machines is marked "Plaintiff's Exhibit 12.")

I have had nothing to do with the Eppler Welt Machine Company, and have never seen any of its leases.

The entire business of the Davey Pegging Machine Company
7 was the manufacture of pegging machines. Its capital was two hundred thousand dollars. I produce a form of lease used by that company prior to the formation of the United Company.

(Form of lease used by the Davey Pegging Machine Company is marked "Plaintiff's Exhibit 13.")

I have brought with me copies of the first form of lease adopted by the United Company for each kind of machine, and copies which show any changes made in its leases up to the present time.

I produce first a form of lease adopted in December, 1900, for Consolidated hand method lasting machine.

(This form of lease of the United Shoe Machinery Company is marked "Plaintiff's Exhibit 14.")

I produce a form of lease for the Consolidated hand method lasting machine when put out for lasting welt or turn shoes. It also was adopted in December, 1900.

(This form of lease is marked "Plaintiff's Exhibit 15.")

I also produce a form of lease for the same machine used when it was put out for McKay work, printed in September, 1900.

(This form of lease is marked "Plaintiff's Exhibit 16.")

These three leases were prepared simultaneously, and the dates which I have given were the dates when they were printed. They were all adopted at the end of 1900.

These three forms were the three forms first adopted by the United Company to cover lasting machines. The first was an initial payment form of lease, under which the lessee paid on initial payment of three hundred dollars for each machine and a royalty of a half cent per pair. The second is a form of lease for the machine when it was leased for lasting Goodyear shoes, under which the lessee paid no initial premium, and the machine was restricted to use with the United Company's welting and stitching machines. In the first form there was no such restriction. The third form was the form of lease used by the company for the machine when it was leased without initial payment for lasting McKay shoes. In that case it was limited (without the initial payment) to shoes operated on by the metallic fastening machine.

8 The only additional form adopted to cover the hand method lasting machine was that used where the machine was leased upon an initial payment for use in the manufacture of welt shoes.

That form of lease, which I produce, was first printed in December, 1906.

(This form is marked "Plaintiff's Exhibit 17.")

The United Company adopted no new form of lease for the Ideal lasting machine until August, 1901. I produce a form of lease printed at that time which substantially embodies the provisions of the Goodyear Company lease previously produced. The United Company continued the practice of the Goodyear Company as to use of the machine with the welter and stitcher. This is the only form of lease that the company has ever printed for the Ideal machine.

(This form of lease covering the Ideal lasting machine is marked "Plaintiff's Exhibit 18.")

The United Company continued to put out the Chase lasting machine on the form of lease used by the Consolidated & McKay Company until June, 1901, when it adopted its first form of lease for that machine, which I produce.

(This form of lease used for Chase lasting machines is marked "Plaintiff's Exhibit 19.")

The United Company adopted no new form of lease for the McKay & Copeland lasting machine until August, 1903. I produce an executed copy of that lease dated in June, 1903. That lease undoubtedly covers a machine which had been installed prior to August, and when the lease was signed it was dated back. Prior to that time the United Company had used the same form of lease that had been used by the Consolidated & McKay Company.

(Form of lease covering the McKay & Copeland lasting machine is marked "Plaintiff's Exhibit 20.")

9 Since the organization of the United Company it has developed a new type of lasting machine called the Number Five, which was first put out about five or six years ago. [The witness was testifying in 1913.] The first form of lease adopted by the United Company for that machine was adopted about five or six years ago. Two forms of lease were adopted, one involving an initial payment and without any restrictions as to use with other machines; the other, a limited license form, without initial payment, restricting the machine to use with some of our other machines. I produce copies of each of these forms. The customer determined which form of lease should be taken. Both forms were submitted to the manufacturer.

(Copy of form of lease for Number Five lasting machine without initial payment is marked "Plaintiff's Exhibit 21.")

(Copy of form of lease for Number Five lasting machine with initial payment is marked "Plaintiff's Exhibit 22.")

The United Company continued for some time to put out welt sewing and outsole stitching machines on the forms which had been used by the Goodyear Company. The first lease in the name of the United Company was printed in the month of December, 1900. The Goodyear Company had separate leases for the "turn set" and the "welt set." The United Company combined the welt and turn provisions in the same lease, and produced its "full set" lease in December, 1900. I produce copy of that form of lease, covering the "full set" of Goodyear machines. The Goodyear Company had continued up to the time when the United Company was formed to require initial payments on all of its machines. The United Company continued that practice up to 1905, so that this form was an initial payment form of lease for both principal and auxiliary machines.

(This form of lease is marked "Plaintiff's Exhibit 23.")

The "full set" form, with the initial payment for each machine, continued to be the only form of putting out these

10 machines until January 1, 1905. At that time the United Company had decided that it would endeavor to put out the Goodyear machines without requiring an initial payment when the machines were installed. Accordingly, there was issued for the first time in January, 1905, a lease for the Goodyear welting and stitching machines without initial payment.

(Form of noninitial payment leases covering Goodyear welt sewing and outsole stitching machines is marked "Plaintiff's Exhibit 24.")

Since the lease of plaintiff's Exhibit 24 was adopted in 1905 we have continued at all times to offer the machines at the lessee's option upon either the initial payment lease or upon the lease without initial payment. At the same time that the option to take the welting and stitching machines without initial payment was offered, the company offered a like option with reference to the auxiliary machines, which previously had always carried an initial payment. I produce a form of lease for the auxiliary machines on the noninitial payment basis. That, or a lease in substantially that form, was adopted January 1, 1905.

(Form of lease for auxiliary machines in the Goodyear department on noninitial payment basis is marked "Plaintiff's Exbit 25.")

The three forms of leases which I have produced have been continued at all times since their adoption, and are in use to-day. They are, as I have said, the initial payment form, called the "full set" lease, and two forms without initial payments, one covering welting and stitching machines, and the other covering the auxiliary machines. The only substantial modification which has been made in these leases is that a provision has been inserted in one of the reprints of the original "full set" lease—that is, the initial payment lease—requiring the principal machines to be used to their full capacity so far as the lessee has work. That provision was introduced about 1905. I produce a copy

11 of the current form of full set lease, which is substantially the same lease that was adopted in 1900, with the addition of the full capacity clause. With the exception of that change the full set lease has been in substantially the same form ever since its adoption in 1900.

12 (This form of lease is introduced and marked "Plaintiff's Exhibit 26.")

The "full set" lease of Exhibit 23, the first form adopted by the United Company in 1900, did not itself provide for the payment of the initial premium. The provision for the initial payment was made by the preliminary order and the payment was made when the lease was signed.

Plaintiff's Exhibit 26, the current form of "full set" lease, provides in the lease itself for the payment of the initial premium.

There is no lease of the Goodyear machines, either with or without initial payment, which requires a lessee to use all of the machines in that department. The alternative is between the "full set" lease, under which the lessee makes payment of initial premiums upon such machines as he chooses to take, and the two leases without initial payment, one of which covers the

principal and the other the auxiliary machines. The lessee is under no obligation to take auxiliary machines.

We haven't any lease of the Goodyear machines, either with initial payment or without initial payment, which limits any of the Goodyear machines to use either in conjunction with any of the Goodyear auxiliary machines or in conjunction with any of the machines of the other departments; in other words, we have never put out a lease of Goodyear machines on any basis which limits them to use in connection with any of our other machines.

The auxiliary machines of the Goodyear department are limited to use with the welting and stitching machines of the Goodyear department, but the welter and stitcher are not limited to use with the auxiliaries, and neither the welters or stitchers or the auxiliaries are limited to use with any machines for any other operations.

13 (In the course of a discussion of the admissibility of the leases the following statement was made by Mr. Gregg:

Mr. GREGG. Everything is charged as a part of the plan to monopolize, and while some of them standing alone would be perfectly lawful, when they become part of the plan, the plan makes them unlawful.)

The WITNESS. The United Company first adopted a form of lease for heeling machines in January, 1900. I produce a copy of that form. This lease was without initial payment, but did not introduce any limitation to use with other machines.

(This form of lease covering heeling machines is marked "Plaintiff's Exhibit 27.")

That form of lease, without initial payment and without limitation to use with any other of the United Company's machines, continued substantially in the same form until May, 1904. Then for the first time the United Company issued a noninitial payment form of lease limiting the machines to be used with certain other machines of the United Company. That form of lease has continued in effect until the present time. I produce a copy of the current print.

(Copy of this form of lease is marked "Plaintiff's Exhibit 28.")

Prior to the filing of the petition in this suit, when there was occasion for the leasing of heeling machines without the limitation—in other words, where a lessee was not qualified to take heeling machines without the initial payment and with the limitation—we were prepared to lease the machines with an initial payment and without the limitation to use with other machines, by attaching a rider to the lease of plaintiff's Exhibit

28, inserting the initial payment and striking out the limitation. I have a copy of the corresponding rider which we adopted for the metallic department, but I don't find that I have a copy of the form adopted by the heeling department. In January, 1912, we printed a lease which embodied the terms of the rider in the lease itself. I have no knowledge whether a lease with this
14 rider attached was ever executed or not. I know that similar leases for the metallic department were executed. As to when that lease was first used—the practice has been in vogue at all times. We did not use a lease of that particular print prior to January 1, 1912, but we had a previous agreement which in terms was exactly like that, that is, the lease with the rider.

Exhibit 27, or a lease substantially in that form, was the only form in use up to the year 1904, containing no limitations to use with other of our machines. Exhibit 28 is the current form of lease for those machines where no initial payment is made and where there is this limitation of the machines to use with other of our machines. In addition to these two forms we have adopted the form that I have been speaking about, by means of the rider. I have had personal knowledge of the lease with that rider on it being offered, but I don't know about the execution of any of the leases. That is not my function.

The United Company's first lease for metallic machines was adopted in March, 1900, and I produce a copy of the form then adopted. That was a form of lease without in'tial payment and without limitation of machines to use in connection with any other of our machines.

(Copy of this form of lease for metallic machines is introduced as "Plaintiff's Exhibit 29.")

In June, 1900, the United Company adopted another form of lease for the metallic machines in which for the first time it introduced a limitation that the metallic machines taken on that form of lease should be used in connection with the United Company's welting and stitching machines and lasting machines.

(Copy of this form of lease for metallic machines is marked "Plaintiff's Exhibit 30.")

When Exhibit 30 was adopted, the use of Exhibit 29 was discontinued.

15 In March, 1901, an alternative form of lease for metallic machines was adopted, in which the limitation to use with certain other machines of the United Company was eliminated, and in place thereof the lessee agreed to pay ten per cent extra for fastening materials used in the machines taken under

this form of lease. Thereafter, this form and that of Exhibit 30 were continued as alternatives.

(Form of lease adopted in 1901 for metallic machines is marked "Plaintiff's Exhibit 31.")

A rider was adopted for attachment to leases in the form of Exhibit 30, eliminating the restriction and substituting an initial payment. I produce a copy of such a lease in the form of Exhibit 30 with this rider attached. This lease is dated September 10, 1910. As to whether this rider was adopted in 1910—it has been available at all times. I haven't the remotest idea when the first lease was issued with this rider attached. At any time when there was a call for it it would have been issued. I know that some have been issued. I do not know how many. I think the call for them has been slight.

(Copy of restricted form of metallic machine lease with rider eliminating the tying clause and substituting an initial payment is marked "Plaintiff's Exhibit 32.")

Subsequently the rider was incorporated into the lease. I have produced a form of lease with the rider incorporated. It was printed in July, 1911.

(This form of lease is marked "Plaintiff's Exhibit 33.")

No other substantial changes in metallic department leases have been made. There have been slight changes in the verbiage. I produce the current form of lease for metallic machines when taken without the in'tial payment and without the provision for ten per cent excess in royalty charge. This was printed in May, 1911.

(This form of lease is marked "Plaintiff's Exhibit 34.")

I produce also a similar form of lease supplying a Standard screw machine alone, one of the metallic department
16 machines. Its provisions correspond to those of the last form introduced. That is used where the machine is taken without initial payment, and is the limited form.

(Form of lease for Standard screw machine is marked "Plaintiff's Exhibit 35.")

Those are all the forms of the metallic department.

17 There was no pulling-over machine until after the formation of the United Company. The machine was developed by the United Company, and the first lease which was adopted for the machine was printed in March, 1902. I produce a copy of that lease, which is a lease for the pulling-over machine by itself.

(Copy of lease for pulling-over machine adopted March, 1902, is marked "Plaintiff's Exhibit 36.")

After the adoption of the pulling-over machine the company developed a series of auxiliary machines for use in connection with the pulling-over machine, preparing the work for the pulling over and doing operations relating to it. When we first put out the pulling-over machine neither the United Company nor anybody else had any such auxiliary machines. They were all developed by the United Company itself, the reason for their existence following the development of the pulling-over machine. By January, 1905, the United Company had developed some six auxiliary machines for use in connection with its pulling-over machine, and it then produced a lease for the so-called "pulling-over set" consisting of the pulling-over machine and the auxiliaries. That lease limited the auxiliary machines to use with the pulling-over machine of the set on which the royalty was paid. All of the machines of the pulling-over set were patented. I produce copy of the lease for the "pulling-over set."

(Copy of lease for the pulling-over system is marked "Plaintiff's Exhibit 37.")

It was later found that some manufacturers desired to use the auxiliary machines upon shoes which were not pulled over on our machine. We accordingly adopted a new form of lease which would permit such use of the auxiliary machines. I produce a copy of that form of lease. It was printed in February, 1909, and is practically the only form of pulling-over machine lease which has been used since that time.

(Copy of lease for pulling-over machine printed February, 1909, is marked "Plaintiff's Exhibit 38.")

18 The only other form of lease for the pulling-over machine is the form which provides for the payment of an initial license fee, without limitation as to use. That lease was adopted some time prior to August, 1911. That lease has been in effect at all times since it was adopted. I do not know how many have been used. It was printed in August, 1911.

(Copy of lease for pulling-over machine, adopted in August, 1911, is marked "Plaintiff's Exhibit 39.")

There were no other forms of lease for pulling-over machines.

The general department of the United Company is a department which handles between 150 and 200 different kinds of machines, which are normally sold outright. The United Company sells all of these machines, but until the filing of the petition in this suit the company allowed a manufacturer who had machines of its other departments, from which it was receiving a royalty, to have the general department machines upon a form of lease under which he paid an initial license fee, and the machines were limited to use in conjunction with our machines

of other departments. No further payment was required for the machines in the way of rental or royalty.

In other words, a manufacturer could buy the machines, in which case he paid us the purchase price and owned the machines; or if he had our royalty machines he had the option of taking the general department machines on lease, in which case he paid an initial payment substantially less than the price at which he could buy the machines, and used them in connection with our other machines which he held under lease. I produce a copy of that form of general department lease which was adopted about 1902, and was used until the petition in this suit was filed, when the practice of leasing general department machines was discontinued.

(Copy of this form of lease used for machines in the general department of the United Company is marked "Plaintiff's Exhibit 40.")

19 About 1908 the United Company introduced another form of lease for general department machines which was also offered only to those manufacturers who had our machines in other departments. Under this form of lease, instead of the lessee paying an initial payment once for all when he took the machines, he paid a small annual rental.

(Copy of this form of lease for general department machines is marked "Plaintiff's Exhibit 41.")

Under both general department leases, plaintiff's Exhibits 40 and 41, there was no royalty payment based upon the extent to which the machines were used. Both forms were used up to the time of the filing of the petition in this suit, but since that time we have discontinued leasing general department machines and sell them only.

As to the importance of the machines in the general department, they perform operations which are just as essential in the manufacture of shoes as any of the other machines

Machines of the United Company's eyeletting department have always been offered on two alternative forms of leases. One involves the payment of an initial premium and is without any limitation regarding the use of the other machines of any department. The other does not require any initial payment and the machines are limited to use with machines of other departments of the United Company. The leases in both cases carry no rental or royalty, but require the lessee to purchase the eyelets used in them from the United Company.

There is no lease for any machine of any department which the United Company ever put out which requires the lessee of any or all of those machines to use any of our eyeletting ma-

chines, so that, no matter what other machines of whatever department the lessee might have from the United Company, he is under no obligation to take any of our eyeletting machines. If he does so, he does so because he wishes our machines. And if the manufacturer wants our eyeletting machines, he can obtain them either upon the noninitial payment form of lease, in case he has our other machines; or if he hasn't our other machines, he must pay the initial payment.

20 I produce a form of lease of eyeletting machines requiring an initial payment of one hundred dollars and not limiting the machine to use with any other United Company machines.

(This form of lease for eyeletting machines is marked "Plaintiff's Exhibit 42.")

I produce a form of lease used for eyeletting machines in the case of lessees having other machines of the United Company, which requires no initial payment, but the machines are restricted to use with certain specified machines of the United Company.

(This form of lease is marked "Plaintiff's Exhibit 43.")

Both these forms of leases, plaintiff's Exhibits 42 and 43, have been in effect since 1902 and are alternative. The other forms of eyeletting agreements are precisely the same.

The United Company does not handle and does not deal in the Xpedite finishing machine. It controls the United-Xpedite Finishing Company through ownership of 55 per cent of its stock.

The Ideal clicking machine was developed entirely by the United Company and is used for cutting out the several parts of the uppers of shoes. Prior to the development of that machine by the United Company that operation was always performed by hand. I produce the form of lease used for that machine, which was adopted as soon as the machine became commercial, about 1908 or 1909, and has continued in use since.

(Form of lease used by the United Company covering Ideal clicking machines is marked "Plaintiff's Exhibit 44.")

The United Company printed no lease for the pegging machines until June, 1901. It uses two forms of leases, which are alternative at the option of the lessee. One of these does not provide for initial payment and limits the machine to use in connection with footwear lasted by a United Company machine and, in metallic fastened footwear, to shoes on which the metallic operations are performed by the United machines. The

21 other form of lease involves the payment of an initial premium, and is not limited to use with any of the United Company's other machines.

(These two forms of leases are marked "Plaintiff's Exhibit 45" and "Plaintiff's Exhibit 46.")

As requested by counsel for petitioner, I produce three forms of orders for machines, one used when machines are to be sold outright, one used when machines are to be leased with initial payment, and one used when machines are to be leased without initial payment.

(These forms of orders are marked, respectively, "Plaintiff's Exhibits 47, 48, and 49.")

These forms, or forms of the same tenor and effect, have been in use ever since the United Company was formed. In the early days there was a separate order form for each department, of substantially the same tenor, but now there is a uniform order for all departments.

I was also requested to produce leases relating to the Gem insole machines. Before the United Company was formed the Gem Flexible Insole Company was engaged in the business of manufacturing and leasing a set of machines for making the patented Gem insole. After the United Company was formed the patent on the insole and the machines for producing it were acquired by the United Company.

I produce a form of lease used by the Gem Flexible Insole Company prior to the formation of the United Company. Attached to that lease is the form of order which was used by the Gem Company which provided for the initial payment.

(The form that was used by the Gem Insole Company is marked "Plaintiff's Exhibit 50.")

The United Company continued the use of that form of lease for a time. In December, 1900, the United Company adopted a corresponding form of lease for the Gem insole machines, and I produce a copy of that form.

22 (Copy of form of lease adopted by the United Company for Gem Insole machinery is marked "Plaintiff's Exhibit 51.")

Some years later, according to my recollection about 1907, the company acquired a patent for another form of insole for welt shoes and machinery for making it. That is known as the "Economy" insole set for producing the patented "Economy insole" for welt shoes. The United Company adopted a form of lease for that machinery which was first printed in December, 1907. I produce a copy of that lease.

(Copy of lease for Economy insole machines is marked "Plaintiff's Exhibit 52.")

Also, in accordance with request of counsel for petitioner, I produce several forms of leases used for minor machines

and some leases used by companies other than the United Company.

I produce a copy of a lease issued by the O. A. Miller Treeing Machine Company to cover its power ironing machine, and a copy of a lease of that company covering its shoe breaking in and forming machine, a new machine used by retail shoe dealers for flexing the soles of shoes when they are sold.

(Copies of these leases used by the Miller Treeing Machine Company are marked "Plaintiff's Exhibits 53 and 55," respectively.)

The O. A. Miller Treeing Machine Company is an independent corporation, the majority of the stock of which is owned by the United Company. Its business is manufacturing shoe trees and incidentally some lines of machines to be used in that connection.

The United Shoe Repairing Machine Company was organized by the United Shoe Machinery Company, as a matter of internal organization, to handle the business of supplying some of its machines to cobblers, and that company simply took over the United Company's business in that particular field, and now carries it on. I produce a form of lease used by that company for its shoe repairing outfit.

(Copy of lease used by the United Shoe Repairing Machine Company is marked "Plaintiff's Exhibit 54.")

I produce a form of lease used by the United Company for its patent leather repairing machine, which is a minor machine. In the manufacture of patent leather shoes they are likely to be scarred and defaced, and this is a machine for repairing those defects. The machine has been developed in the last three or four years, and this form of lease is the one first adopted and now in use.

(Copy of lease used by the United Company covering patent leather repairing machine is marked "Plaintiff's Exhibit 56.")

I produce a form of lease used by the United Company for leasing treeing machines made by the O. A. Miller Treeing Machine Company. The Miller Company sells these machines outright. The United Company purchases machines from the Miller Company and leases them to its customers.

(Copy of lease used by the United Company for the Miller shoe treeing machine is marked "Plaintiff's Exhibit 57.")

Finally, I produce a form of lease used by the United Xpedite Finishing Company, which puts out a machine for polishing the edges of heels. The Xpedite Company is a separate corporation, but the United Company owns a majority of its stock.

(Form of lease used by the United-Xpedite Finishing Company is marked "Plaintiff's Exhibit 58.")

I have produced forms of leases now current for all the more important machines and all of the minor machines that have occurred to me.

The United Company has not sold either the Goodyear welt sewing machine or the Goodyear outsole stitching machine. The machines which were sold by the United Company prior to the beginning of this suit all belonged to the general department.

There are in the general department some 150 or 160 different kinds of machines which the United Company sells.

I testified yesterday that I was not familiar with the Eppler welt situation. I have looked that up over night and I find from the files that the United Company acquired the property of the Eppler Welt Machine Company in March, 1899, and I find that among the assets so acquired were various machines on lease and the leases covering them. I found in the files and I produce an Eppler Welt Machine Company lease dated May 24th, 1897, an original lease. That same form of lease was apparently in use right along, because I have another copy of it in identical form dated July, 1898.

(Form of lease used by the Eppler Welt Machine Company is marked "Plaintiff's Exhibit 59.")

Cross-examination:

I never heard of a patent leather repairing machine until our machine, which was developed by the experts of our company, was put on the market.

The treeing machine which I referred to was developed by the experts of the Miller Company.

The Miller machine for flexing the soles of shoes is used by retail dealers when a shoe feels stiff on the customer's foot or a particular spot needs to be stretched, and it manipulates the shoe so as to make it more flexible. This machine is a recent development.

The Gem flexible insole is used in welt shoes only, and it comprises a thin piece of leather reinforced with canvas. A welt shoe has two soles—an inner sole, which is next to the foot and to which the welt is attached, and an outsole, which is sewed to the welt. The insole must have some means for holding the seam which attaches the upper and welt to it. If the insole is made of leather it is necessary, to produce means for holding that seam, to cut into the leather and turn up a portion of it, and that requires a certain thickness of leather and a good quality of leather. As leather is so expensive, that was an item of considerable importance in the manufacture of a welt shoe, and tended to retard the development of that shoe.

The Gem patent consisted in taking a much thinner piece of leather and forming a shoulder on it and then covering it with a cement coated canvas, which is much cheaper than the leather. The Gem insole is only adaptable to use with welt shoes. The Economy insole was another attempt, of later development, to provide a substitute for a leather insole and that also is adapted for use with welt shoes only.

The business of the United Company is divided into different departments. The general department includes the machines which are sold, numbering something in excess of 150.

The Goodyear department includes the machines which are peculiarly adapted for making Goodyear welt shoes, and are never used on any other shoes. These comprise the Goodyear welter and stitcher and the Goodyear auxiliary machines.

The heeling department comprises the machines which make and attach heels and nothing else. Some of those machines are adapted for making and attaching the heels of welt shoes, and some are adapted for making and attaching the heels of other kinds of shoes.

The metallic department comprises machines for inserting metallic fastenings of various kinds, including machines adapted for use upon the different kinds of shoes. The lasting department includes machines for lasting all the various kinds of shoes.

The departments which I have named are all the departments excepting the eyeletting department. The pulling-over machines are preliminary to the lasting operation, and are handled by the lasting department as a subdivision. The Davey pegging machine is handled by the metallic department. It is not
26 a metallic department machine, but is handled in that department as a matter of convenience.

We don't handle the ordinary sewing machines.

Mr. CHOATE. The Singer sewing machine does almost all the work upon the uppers of shoes.

The WITNESS. The only sewing machines which we have are the Goodyear welt and turn sewing machines, the Goodyear outsole stitching machine and the McKay sewing machine, which is in our general department.

The lasting machine put out by the Goodyear Company was called the Ideal lasting machine. That machine was developed for the purpose of lasting women's welt shoes, and practically its entire use was lasting women's welt shoes.

The three machines developed by the Consolidated & McKay Company were the McKay & Copeland, the Chase, and the hand method lasting machines. The McKay & Copeland lasting machine was of the so-called bed type. It held the shoe in position

for lasting and molded it into shape, holding it in place for the lasting tacks to be inserted by hand. The Chase and the Ideal lasting machines were also of the bed type.

The Consolidated hand method lasting machine drew the upper over the last step by step, from one side of the shank around to the other side, and inserted the lasting tacks automatically. The operator held the shoe up to the machine and turned it around as the machine operated on it. That machine was developed in the neighborhood of 1890. It was used almost entirely upon McKay sewed shoes.

The McKay & Copeland lasting machine was a heavy type of machine, designed and adapted for lasting heavy brogans and metallic fastened shoes. The Chase lasting machine was peculiarly adapted for lasting men's welt shoes and light metallic fastened and pegged shoes.

Mr. CHOATE. I ask your honor's attention to the difference in manufacture between the McKay shoe and the welt shoe, which to some extent requires a difference in the lasting operation. The McKay shoe has the sole sewed right straight
27 through, leaving the seam on the bottom of the shoe inside. That seam running round there is the thing that gave the name to the McKay shoe, that style of fastening the sole to the upper and sewing the seam right through. Now, the welt shoe is distinguished from the McKay shoe by this strip of leather, which is called the welt. The upper is sewed to that welt, sewing it sidewise. You see the stitch goes right into that channel and lays there. Then the sole is sewed to the welt, the thread lying in this channel, the purpose being to prevent the seam from coming against the sole of the foot. The inside of that shoe is perfectly smooth, and there is no seam on the bottom of it.

(Defendants' Exhibit 1 is a welt shoe, showing the Gem insole with welt attached. Defendants' Exhibit 2 is a McKay sewed shoe cut in halves, showing the sewing. Defendants' Exhibit 3 is a welt shoe with a leather insole, having a welt partly attached. Defendants' Exhibit 4 is a welt shoe with the outsole attached, and cut to show the stitches attaching the outersole. Defendants' Exhibit 5 is a McKay sewed shoe lasted by the hand method machine, and showing the pleats at the toe.)

28 The WITNESS. After the formation of the United Company that company did nothing whatever with reference to the outstanding leases under which machinery had been obtained by manufacturers from the constituent companies. The manufacturers continued to hold their machines under the old leases so long as those leases continued to run. When the United

Company adopted a new form of lease, it was offered to any lessees to take, if they desired. Old lessees had the privilege of changing to the new form if they wished to do so. But if the old lessees did not want the new leases they could remain undisturbed and enjoy their machines under the old forms of leases. A good many old leases issued by the constituent companies before the organization of the United Company are still outstanding. For example, there are leases still outstanding of the kind which had no fixed term but ran during the life of the patents on inventions embodied in the machines leased, or any additions or improvements thereto. Leases of that kind were issued by all of the constituent companies.

The constituent company which issued leases for a definite term of seventeen years was the McKay Shoe Machinery Company, as to its heeling machines. About 1897 or 1898 that company adopted for its heeling machines a form of lease which named the term of 17 years, but the lease did not continue for 17 years and stop there, as our leases do. It provided that the lease should continue for the term of 17 years, and thereafter as long as there should be any patented invention in the machine. There are outstanding leases of that kind which have not expired. The United Company has machines out in the hands of different customers under a great variety of forms of lease.

After the United Company was formed it continued to manufacture and supply to customers all of the lasting machines—the Ideal, the McKay & Copeland, the Chase, and the Consolidated hand method—to the full extent that customers desired them.

No machines were suppressed.

29 The No. 5 lasting machine was developed by the United Company about 1906. That is a bed laster of an improved type, and very many manufacturers having bed machines of the old types have come in and changed over to the new machine, and to a considerable extent the old types have become obsolete and have been supplanted by the No. 5 laster.

The hand method lasting machine is still very extensively used. Its operation on a shoe is indicated particularly by the pleating about the toe.

Before the organization of the United Company all of the constituent companies originally offered their machines upon leases involving the payment of an initial premium for each machine, and also with a royalty. The Goodyear Company did that and their practice was continued until after the United Company was formed. Metallic, heeling, and lasting machines were also put out on the initial payment form only. It was not

until a time subsequent to 1890 that leases without initial payments began to be offered at all. The McKay Company was putting out metallic and heeling machines upon the noninitial payment basis when the United Company was formed. The Chase and the Consolidated hand method lasting machines were offered upon optional forms, including a form without the payment of an initial premium; but the McKay & Copeland lasting machine and all other machines were put out on initial payment leases only.

Before the formation of the United Company the Goodyear Company charged an initial payment of $300 each on the welter and the stitcher. That sum has never been increased by the United Company. Wherever an initial payment has been charged by the United Company on the welter and the stitcher it has remained the same; but in 1905 the United Company offered those machines without that initial payment. The royalty charged by the Goodyear Company, before the United Company was formed, was the same as to-day. It has never been increased, but in the meantime both the welter and the stitcher have been very much improved, the auxiliary machines which the Goodyear Company had have been improved, and the United Company has introduced many additional auxiliary machines, all for the same royalty.

In plaintiff's Exhibit 25, the form of lease for Goodyear auxiliary machines, the figures in column 2 of the schedule are the small annual rentals paid for the machines against which they are set, when the machines are taken without initial payment. Otherwise there is no charge whatsoever for the use of those machines, but they are limited to use with the welting and stitching machines, in respect to which there is a royalty charge. That royalty charge for the principal machines is the same whether the lessee has the auxiliary machines or not.

When the United Company was formed there were 16 or 17 auxiliary machines. The number has been increased, and now there are about 30 auxiliary machines. Those are all furnished to lessees of the welter and stitcher in the same way that the original 16 or 17 machines were furnished, without increase in the royalty and for a similar nominal charge.

The United Company has reduced the royalty charged by the Goodyear Company for the use of its machines in making turn shoes, so that it is now only fifty per cent of the royalty which was charged by the Goodyear Company.

The heeling machine royalties and initial premiums have not in any way been increased by the United Company, and the company has continued to sell material for use in the metallic

fastening machines at the same scale of prices which was in effect when the company was formed.

The United Company licenses its lessees to use the trade-marks "Goodyear Welt" or "Goodyear Turn," as the case may be.

The Goodyear welter and stitcher have attached to them a locked indicator which measures the revolutions of the
31 main shaft of the machine, and there is one stitch for each revolution. It is the only way in which we can keep track of the extent to which the machines are used. None of the auxiliary machines has any indicator so that the amount of work done by them is recorded by the principal machines. To keep track of the use of the auxiliary machines we have to depend upon the indicators on the principal machines.

As to the order of the operations of pulling-over, lasting, welting, stitching, heeling, and metallic fastening, the pulling-over operation would be the first of these. That places the upper of the shoe over the last preparatory to the operations which have to do with the attaching of the sole. Defendants' Exhibit 6 represents a shoe ready for the pulling-over operation, and defendants' Exhibit 7 shows a shoe as it comes from the pulling-over machine. No perfect pair of shoes could be made if the upper were not placed in exactly the right position on the last. The pulling-over machine locates the upper with absolute accuracy in the position which it should assume on the last. Then, with just the proper amount of force, it stretches the upper into place, and then, without disturbing the upper, simultaneously drives seven tacks, which secure the upper at seven points. The tack at the heel of this exhibit was driven in a preliminary operation by one of the pulling-over auxiliary machines.

Following the pulling-over operation the shoe goes to the laster. The lasting operation consists in securing the upper all the way around the bottom of the shoe in the same position in which it has been placed by the pulling-over machine. As shown in defendants' Exhibit 8 (a welt shoe, partially made), in lasting a welt shoe the tacks are driven only part way in, and are subsequently withdrawn. In a McKay shoe the tacks are driven all the way home.

After the lasting operation the upper is fitted to be operated upon by the Goodyear machines. It goes first to certain auxiliary machines of the Goodyear department, such as
32 the trimmer and the tack-pulling machine, which prepare the shoe for the welting operation. The tack-pulling machine pulls out the lasting tacks.

After the sole has been attached by the Goodyear operations, and before the shoe goes to the heeling machine, the heel portion

of the sole, which has not been attached in any way to the upper, as shown by defendants' Exhibit 9 (a shoe which has been operated upon by machines of the Goodyear department), must be attached by the loose nailing machine of the metallic department. That machine secures the heel portion of the sole to the upper in proper position to be operated upon by our heeling machine, which in turn attaches the heel over the heel seat of the sole, previously operated upon by the loose nailing machine. The channel in this exhibit was formed to receive the stitch, the lip was turned up, then put back, and cemented in place, by some of the auxiliary machines in the Goodyear department.

The middle and front portions of the sole are attached to the upper by the Goodyear machines, while the heel end of the sole is attached by the metallic fastening machine.

The machines of all these departments use material such as thread, leather, wire, etc., and the fact that such material passes through a machine requires the finest sort of adjustment and timing. All these machines which handle material are peculiarly machines which require the constant attention of expert mechanics to keep them in condition for efficient operation.

At the time of the formation of the United Company the Goodyear machines were put out upon initial premium leases only. The United Company continued the same method of leasing Goodyear machines, which had been used by the Goodyear Company, until January, 1905.

On January 1, 1905, the initial payments were eliminated from the Goodyear system of machines, but the United Company did not at that time, or at any time, limit the Goodyear machines,

upon either form of lease, to use with the United Com-
33 pany's machines of any other department, but it did then
limit the machines of some other departments to use with

the United Company's Goodyear machines. The leases with those restrictions were alternative forms, and the company still preserved the alternative initial premium leases for each department.

At this time the company had found that the necessity of requiring a substantial initial payment for each machine was retarding the development of the manufacture of Goodyear welt shoes, because of the large amount of capital required to equip a factory to make Goodyear shoes. The company was seeking for its own account, as well as for the benefit of the manufacturers, to find a method by which it could eliminate that large initial payment upon each machine, without increasing the royalty, but it was confronted by this condition: Those machines were expensive and there were very many of them, and the initial payments had been a very considerable source of income.

In that connection the idea of restricting the heeling machines to use with the welting and stitching machines, the same idea which the Goodyear Company had followed with reference to its lasting machine, was adopted. Accordingly, there was then adopted for the first time a lease for the heeling machines which restricted them to use in connection with footwear which was welted and stitched upon the United Company's welter and stitcher, but that was an alternative form. At no time prior to 1904 was there any restricted lease for the heeling machines, and at any time after 1904 any lessee who desired the machines without the restriction could have them by paying an initial premium. If the lessee desired to take the Goodyear machines without making the intitial payments, the provision was made that the heeling machines or metallic fastening machines or lasting machines should be used only on shoes which were welted and stitched on our welter and stitcher.

34 About 1899, approximately 17,000,000 pairs of Goodyear welt shoes were made out of a total production of something less than 200,000,000, and last year some 60,000,000 or 70,000,000 of Goodyear welt shoes were produced out of a total of about 250,000,000.

Prior to the introduction of the noninitial payment leases, each time a lessee took a machine he had to pay down a certain amount of money, and he was not likely to do that unless he wanted the machine, but when machines were put out without initial payments the situation changed. The lessee then had no money in the machines and it was entirely the money of the lessor that was in them, and unless the lessor protected itself in some other way there was nothing to prevent a manufacturer from taking machines with no intention of using them—for example, simply to have them stand in his factory as a threat to his hand labor, to use as a means of trading for some other machine, or to use in case of an emergency.

So, when the constituent companies took off the initial payments before 1899, they simultaneously sought to protect themselves in several different ways against nonuse or misuse of the machines. Usually two or three different methods were adopted in the same lease. Provisions were inserted that the lessor might cancel the lease if the machines remained unused for a certain length of time; that he might cancel if they were not used to the extent of earning a certain amount of royalty within a certain time; that the lessee should pay a minimum guaranty in case the machines were not used enough to earn the amount of the guaranty; that the machines should be used for doing all of a certain kind of work which a lessee might have; that the

machines should be used for a certain kind of work only. The full capacity clause was inserted; and provisions were
35 inserted that, in case the lessee had more work than could be done by the machines under lease, he should take additional machines; and that if he did not do so, the lessor could cancel his lease and take out his machines. There were also agreements in some cases that the lessee would not introduce any machinery not obtained from the lessor for doing the same work as done by the lessor's machines, and there were various limitations as to the manner and method of using the machines; for instance, a provision that the lessee should not retain the machines for the purpose of controlling his hand operatives or negotiating trades with other companies.

In my study of the lease situation prior to 1899, I find that in all cases when the companies began to offer machines without initial payments they sought in some or all of these ways to protect themselves against the nonuse or misuse of the machines.

In a properly organized factory a certain number of shoes should be started every day and the same number of shoes taken out every day. There is a certain flow of the work through the factory, which must not be interrupted if the factory is to be operated efficiently. If an inefficient machine is introduced which is not adapted to be used with our machines, or which breaks down and is not repaired, or which is not given service, it has about the same effect as there would be upon the flow of water through a hose if a hole were cut in the middle of it. It dams the work behind it, while the work in front of it continues until that work is all done; and then the operations in front of it, which succeed the broken down machine, must suspend until work is prepared for them.

For instance, if an inefficient welting machine were introduced into a system so that the welting process had to stop, the machines which were preparing the work for the welter would have to stop, for otherwise they would accumulate a mass of work behind the welter which there would be no means of getting away. The machines which follow the welter—the stitcher, the metallic machines, the heeling machines—would have some work to do for a day or two, and then their supply of work would run out and they would have to suspend.

36 We protect ourselves against an inefficient machine being used in the series by the restrictive clauses in our leases.

The general department machines ordinarily do not handle material, such as thread, leather, or metal; and in general there

is not the same necessity for expert attendants on those machines as there is on the machines that handle material. Some of the general department machines have been developed by the United Company, and some it has acquired since its organization. It is a general line of machinery.

The company maintains a large corps of inventors who devote their entire time to experimentation. As an illustration of the machines the company has developed, the pulling-over machine was some six or seven years in development, and something in excess of a million dollars was spent in developing it before we got our first commercial machine. The royalty charged for the use of the pulling-over machine, with the auxiliary machines which we have developed with it, is one-half a cent a pair.

My recollection is that the aggregate of the royalties which the company gets for machines used for making McKay sewed shoes is slightly less than a cent per pair. The total royalty which the company receives for the use of all its machines used in making a welt shoe is about six cents per pair for the high-priced men's shoes, and substantially less for women's and children's shoes. Those royalties include not only the Goodyear machines, but the heeling, metallic, lasting, pulling-over machines, and so on, through our entire line.

I have here a copy of the heeling department lease printed in January, 1912. While this lease was not printed until that time, it embodies a practice which the company had pursued prior to that time, and at all times since 1904. Prior to 1912 we used a form of rider which was attached to an earlier lease.

(Form of lease used by the United Company for the heeling department, printed in January, 1912, is marked for identification "Defendants' Exhibit 10."

37 JUNE 25, 1913.

HAROLD G. DONHAM, witness for the United States (recalled).

Direct examination resumed:

In 1912 the United Company had machines in 3,326 factories representing something over 3,000 lessees, all in the United States. These are not all shoe manufacturers.

According to our royalty records, during the calendar year 1911 we received royalty from 1,033 lessees who were shoe manufacturers.

As to how many shoe manufacturers there were in the United States at that time, I don't find that any two calculations agree or that any of them agree with the census. From what data I have I should say there were somewhere between 1,300 and 1,500.

I haven't the figures of the census of 1910 with me. It was somewhere in the neighborhood of 1,300, as I recall it.

I was requested to produce a statement of the machines on lease by the United Company. I produce a list of machines out on lease from the United Company March 1, 1911, on leases executed before and since February 7, 1899.

(This list is marked "Plaintiff's Exhibit 163.")

This list includes the machines of all departments of the United Company, and also includes what was formerly the Goodyear Shoe Machinery Company of Maine, which is now used as a department of the business, leasing machines in a large section of the country in the West, in more than half the States, I think. The list does not include subsidiary companies like the O. A. Miller Treeing Machine Company and the United Xpedite Company; and it does not include machines we have sold outright.

I produce copies of the annual reports of the United Shoe Machinery Corporation for the years 1908 to 1913, inclusive, covering all that has been issued in printed form.

(Copies of these reports for 1908, 1909, 1910, and 1911 are introduced as plaintiff's Exhibits 164 to 167, inclusive.)

Prior to the formation of the United Shoe Machinery Corporation, no printed reports were made to stockholders of the United Shoe Machinery Company. The records of the directors show that a treasurer's report was made each year and
38 filed. I do not have copies of these reports in my files, but without doubt there are such reports in the treasurer's files and I will produce them.

The form of lease which you have handed me is a form of lease for the Consolidated hand method lasting machine when put out for welt and turn work, without the initial payment. I have no doubt that it is a form that we printed, and that, unless we found some error in it, the lease was used and is outstanding.

(This lease form is marked "Plaintiff's Exhibit 168.")

I produce the current form of lease for the Boston lasting machine, so called, which is merely a tacking device. The blank in article six of that lease, when it goes out, is filled in showing that the rental is $25.00 per year for the machine for tacking purposes; there is no royalty.

(This lease is marked "Plaintiff's Exhibit 169.")

I produce the form of lease used for the McKay sewing machine when the machine is leased. That machine is either leased or sold.

(Form of lease for the McKay sewing machine is marked "Plaintiff's Exhibit 170.")

I produce a copy of the current lease for the Ensign lacing machine.

(This is marked "Plaintiff's Exhibit 171.")

As to leases for the Duplex eyeletting machine, I have previously produced eyeletting machine leases in both the initial payment and no initial payment form. Various kinds of eyeletting machines went out on similar forms of lease. If you want specific forms with the name "Duplex" printed in, I have those forms here. As requested, I produce the form of lease for the Duplex eyeletting machine when it is installed without initial payment and limited to use with others of our machines.

(Form of lease for Duplex eyeletting machine is marked "Plaintiff's Exhibit 172.")

39 As you request, I also produce the form of lease used for the Duplex eyeletting machine when it goes out with initial payment and not limited to use with other machines. We put out very many Duplex eyeletting machines on leases with initial payments and without the tying clause.

(This form of lease is marked "Plaintiff's Exhibit 173.")

I produce the form of lease for the Vulcan foot power eyeletting machine. That is a very small machine and is always put out on an initial payment of $15.00, and is not limited to use with our other machines. That machine never goes out on the restricted basis.

(Lease covering Vulcan foot power eyeletting machine is marked "Plaintiff's Exhibit 174.")

The lease which is printed as Exhibit 5 in the petition was a lease in which an error was made in printing. Section 8 was not limited, as it should have been, to the right to terminate the Goodyear leases only. When the mistake was discovered the lease was reprinted to correct that error. Some leases had gone out before we discovered the error. The error did not occur in the corresponding lease for auxiliary machines.

Plaintiff's Exhibit 24 is the current form corresponding to Exhibit 5 of the petition. It is used for the same machines, and is the lease which was printed to correct the error in Exhibit 5. It was some little time before the error in the lease of Exhibit 5 of the petition was discovered, as we never had occasion to rely upon that clause in any way. It was corrected when it was discovered.

Cross-examination:

During the time that misprinted lease was in use absolutely no action was taken by the company under the eighth clause. If there had been, the mistake would have been discovered earlier.

As soon as it was discovered it was corrected, and no more of that form were used.

40 Plaintiff's Exhibit 168 was one of two alternative forms of lease which the company offered for the Consolidated hand method lasting machine, one being with an initial payment and no tie, and the other omitting the initial payment and limited to use with our welter and stitcher.

The Boston lasting machine is not a lasting machine at all, but merely a tacking device, a little contrivance which we put out for purposes other than lasting—chiefly for tacking on insoles. The rental is $25.00 per year, with no royalty. Lasting is pulling the upper into shape over the last and holding it while tacks are being driven. This machine did not pull the upper at all; simply drove a tack when the shoe was presented to it in form to be secured. If it were to be used at all in connection with any lasting operation the lasting would have to be done by hand or by some other means. All this machine did was to drive tacks.

This machine was put out on a nominal rental of $25.00 per year, payable in monthly instalments, and was limited to use with some of our other machines. There were other tackers manufacturers could have on the other basis. I don't know whether any of these machines went out on the other basis or not. This machine is absolutely obsolete as a lasting device, and now it is used merely for incidental tacking on other parts of the shoe.

Referring to plaintiff's Exhibit 170, this lease of the McKay sewing machine limited the machine to use with the lasting machine, but the company has always sold those machines and still sells them without any tie. The lease requires an initial payment of $100.00 and a rental of $5.00 per month, but with no royalty based upon the amount of use. The machine was sold all the way from $250.00 to $600.00, according to the type of the machine and the manner in which it was fitted. The manufacturer had his choice between these various alternatives, to buy such type as he saw fit, costing from $250.00 to $600.00, or leasing upon those terms.

41 I do not know of any request having been made for a lease of the Ensign lacing machine not restricted to use with other machines. If it had been made the company would have installed it upon the initial payment basis without the restriction, by attaching a rider to the lease. Attaching such a rider was the practice we had as to all our machines when occasion arose to put them out in that way.

The Duplex eyeletting machine leases are substantially the same as the other eyeletting machine leases. Eyeletting machines were put out on two alternative forms. One form re-

quires the payment of no initial license fee and restricts the machine to use on footwear operated upon by some of our other machines. Under the other form the lessee pays an initial premium of $100.00 when the machine is installed and it is not limited to use with any of our machines. Under both forms of lease there is no royalty, and our compensation for the use of the machine is derived from the sale of the eyelets used in the machine, which the lessee is required to purchase from us. We sell the eyelets at the same price on both forms of lease. The only difference is, if the lessee wants to use the machine with anybody else's machine he pays an initial premium of $100.00. There are hundreds of eyeletting machines out on the initial payment basis.

These eyeletting machines are capable of inserting eyelets of various kinds besides shoe eyelets. Very many of them are used by corset makers, sailmakers, belt makers, tobacco pouch makers, and box board manufacturers. They have a very wide field outside of the shoe field.

We carry eyelets of all kinds and sizes and sell them all at the same price to everybody, irrespective of the machine on which they are to be used, whether our machine or somebody else's machine. Many of the eyelets which we sell are used in other machines.

Under the lease of the Vulcan foot power eyeletting machine the lessee made an initial payment of $15.00, with no re-
42 striction whatever, and he bought his eyelets from us. That has now been withdrawn and the machine is sold only, at a small price, $25.00 or $50.00. That change was made within a year or two.

Direct examination resumed:

I have no knowledge as to whether or not, at the time I made up the list of machines I produced, there were any shoe manufacturers in the United States making welt shoes, except the Buffalo Shoe Company and the R. H. Long Company, or the Framingham Shoe Company, who were not using the United Company's machines. We have records of our own machines, but we have no means of knowing factories operated by other people's machines.

(At this point counsel for the United States offered copy of a circular letter dated February 11, 1899, by the president and treasurer of the Consolidated & McKay Lasting Machine Company to stockholders of that company relating to the taking over of the Consolidated & McKay Lasting Machine Company, Goodyear Shoe Machinery Company, McKay Shoe Machinery Company, International Goodyear Shoe Machinery Company,

Goodyear Shoe Machinery Company of Canada, Eppler Welt Machine Company, International Eppler Welt Machine Company, and Davey Pegging Machine Company, by the United Shoe Machinery Company of New Jersey. This letter was marked "Plaintiff's Exhibit 175.")

43 JUNE 26, 1913.

HAROLD G. DONHAM, witness for the United States (recalled). Direct examination resumed:

The authorized capital of the Goodyear Shoe Machinery Company was three million dollars. It was not all outstanding at the time of the acquisition of that company by the United Company. I do not know exactly what amount was outstanding, but $4,631,560 in stock of the United Shoe Machinery Company was given in exchange for the entire outstanding capital stock of the Goodyear Company, which was some shares less than its entire authorized capital stock.

The amount of the capital stock of the International Goodyear Company outstanding was substantially less than the million dollars stated in the petition. The greater portion of the stock of that company was owned by the Goodyear Company. I do not know whether the stock was all issued. When we acquired the International Company we had to acquire only the outstanding shares which were not owned by the Goodyear Company, as the balance came in as part of the assets of that company. Instead of $680,000 being paid as stated in the petition, the actual amount was $287,105, which was paid to shareholders other than the Goodyear Company.

The outstanding capital stock of the Consolidated & McKay Company was from $100,000 to $150,000 less than $3,000,000, the amount stated in the petition. The amount of United Company stock issued in payment for that stock was $4,432,900, which is less than the amount, $4,599,840, stated in the petition.

When the United Company acquired the Consolidated & McKay Company, that company had a substantial amount of cash in its treasury and had not paid its regular dividends. The payment to the stockholders of the Consolidated & McKay Company, in addition to stock in the new company, of $1.00 in cash on each share of preferred stock and $4.50 in cash on each share of the common stock, was an adjustment of the dividends

44 which in the ordinary course would have been received by the stockholders of that company.

The issued capital stock of the McKay Shoe Machinery Company was $5,000,000, and it was all outstanding; $5,500,000 in stock of the United Company was issued in exchange for that stock, which was taken in on the basis of 110.

At the time of the organization of the United Company a syndicate was formed which subscribed for $1,124,067.50 in its common stock at par and for $1,271,367.50 in its preferred stock at par, paying $2,395,435 therefor. This amount was used to pay the expenses of organization, the floating debts of all the old companies, and for the purchase of the capital stock of the Eppler Welt Machine Company, the International Eppler Welt Machine Company, and the Goodyear Shoe Machinery Company of Canada, leaving a balance of five hundred thousand dollars in cash as working capital for the new company. It is quite true that some of the money so subscribed was used to make the cash payments on the stock of the Consolidated & McKay Lasting Machine Company.

I do not know what the capital stock of the Eppler Welt Machine Company was, and I have never seen any records of that company except a rather badly kept record of directors' and stockholders' meetings, minutes of the meetings.

I do not know what the capital stock of the International Eppler Welt Machine Company was. It is stated in the petition that the issued capital stock was $500,000; I really have no knowledge one way or the other about it. I don't think I have any record that would show; I am not even sure that there is a minute book.

The issued capital stock of the Goodyear Shoe Machinery Company of Canada was $225,000.

I do not know what the issued capital stock of the Davey Pegging Machine Company was. I think there is among the old papers a stockholders' and directors' record book, but I have never examined that to see whether it would show the amount of the capital stock. It was all owned by the Consolidated & McKay Lasting Machine Company and came to us as part of the assets of that company.

I do not know how much was paid by the United Company for the property of the Eppler Welt Machine Company, or how much was paid for the International Eppler Welt Machine Company. I have made a search for records that would show how much was paid for the Eppler Welt Machine Company, but I find none. I have made inquiries as requested, and have been unable to get that information.

I do not know, and do not think the records would show, what the expenses of the organization of the new company were, or what the floating debts of the old companies were. I have never seen any such record. I assume that the Eppler Welt Company controlled the International Eppler Welt Machine Company, though I have no definite knowledge about it. I do

not know whether the Eppler Welt and International Eppler Welt came as one concern into the United. It was simply included in a miscellaneous lot of property that came in for a lump sum and I have been unable to divide up that lump sum among the several items.

Our records show that we issued $2,395,435 of stock for those several purposes. They do not show in what proportion it was divided, and I do not know. The $500,000 in cash which was provided as working capital came out of this $2,395,435. It is substantially correct that the difference between $500,000 and $2,395,435 was used for paying the expenses of the organization of the new company, the floating debts of the old companies, and the purchase of the property of the Eppler Welt Machine Company, the International Eppler Welt, and the Goodyear Company of Canada. There may have been some additional items. No other companies were included, so far as I know.

I produce statements showing the financial condition
46 of the United Shoe Machinery Company on March 1st of each year from 1901 to 1907, inclusive.

(These statements for March 1, 1901, to March 1, 1907, inclusive, are marked "Plaintiff's Exhibits 180 to 186, inclusive.")

I produce a statement with respect to the companies in which the United Company holds stock. On this statement the year following the name of each concern is the year in which it was organized.

(This statement is marked "Plaintiff's Exhibit 187.")

47 With respect to Booth Brothers Company, the United Company purchased the business of Booth Brothers, a partnership, and formed a corporation under the laws of New York to conduct the business. It is engaged in business in Rochester, New York. I have no doubt they sell in other States.

The Boston Blacking Company, which was eliminated from the bill, is engaged in putting out cements, blacking, and stains.

The British United Shoe Machinery Company, Limited, has an issued capital stock of £400,000 and the United Company owns a majority of the stock. The British Company is engaged in business at Leicester, England, and I think its business is almost entirely confined to Great Britain. It does a general shoe machinery business in England.

The United Company owns one-half of the issued capital stock of the Campbell-Bosworth Machinery Company, which is engaged in manufacturing and dealing in harness machinery exclusively. Its offices are in Boston and are separate from those of the United Company. It has no manufacturing plant,

but has its machines built for it by outside machinists under contract.

A majority of the issued capital stock of W. W. Cross & Company, Incorporated, is owned by the United Company. It is engaged in the business of manufacturing tacks. I think it does not do an interstate business.

The Deutsche Vereinigte Schuhmaschinen Gesellschaft has a factory at Frankfurt-on-Main, Germany, and is engaged in general shoe machinery business in Germany. Fagus G. m. b. H. is a corporation recently formed to engage in the last business. Whether it has actually begun business, I don't know.

S. A. Felton & Sons Company is engaged in the manufacture of brushes of various kinds used in making shoes, at Manchester, New Hampshire.

48 J. K. Krieg Company is engaged in business at New York. Its business is chiefly local.

The Ross-Moyer Manufacturing Company has its place of business in Cincinnati, Ohio.

J. C. Rhodes & Company operate a factory at New Bedford, Massachusetts.

Schweiz Vereinigte Schuhmaschinen A.-G. is engaged in business in Switzerland. I understand that it does a general shoe machinery business.

The Security Eyelet Company is engaged in business in England. I don't know where it has its headquarters.

S. O. & C. Corporation is engaged in business at Ansonia, Connecticut. It manufactures and sells eyelets.

T. G. Plant Company is a shoe manufacturing concern having its place of business in Boston.

The United Awl & Needle Company has its factory at West Medway, Massachusetts.

The United Fast Color Eyelet Company is engaged in business in Massachusetts and has its offices in Boston.

The United Shoe Machinery Company of Canada is engaged in business in the Dominion of Canada and has its factory and chief offices in Montreal.

The United Shoe Machinery Company de France is engaged in a general shoe machinery business in France, having its factory and chief offices in Ivry.

The United Shoe Machinery Company of Maine is a department of the New Jersey Company, and leases shoe machines which it obtains from the New Jersey Company. That constitutes its entire business. It is a matter of internal organization.

The United Shoe Machinery Company of Mexico conducts a

general shoe machinery business in Mexico, and its headquarters are in Mexico City.

49 The United States Shoe Machinery Company of South America is engaged in a general shoe machinery business in South America. Its headquarters are at Buenos Aires, in the Argentine Republic, and it has an office at Santiago.

The United Shoe Repairing Machine Company was formed by the United Shoe Machinery Company to take over the cobbling part of its business. It is engaged in business in Massachusetts, and its principal office is in Boston.

The United-Xpedite Finishing Company is engaged in the business of putting out a finishing machine, and its principal office is in Boston.

Aktieselskabet United Shoe Machinery Company, of Copenhagen, is engaged in business in Norway, Sweden, and Denmark, and, I believe, does a general shoe machinery business.

The Ellis Lacer Company has been dissolved and is out of business.

The Rimmon Eyelet Company is a branch of the J. C. Rhodes business.

The United Shoe Machinery Company, of Connecticut, is a Connecticut corporation formed to do business in Spain and Portugal. Its stock is owned by the United Shoe Machinery Company de France.

I produce a list of the officers and directors of the companies referred to in Exhibit 187.

(This list is marked "Plaintiff's Exhibit 188.")

The principal factory of the United Shoe Machinery Company, of New Jersey, is at Beverly, Massachusetts. There are approximately 4,000 employees at that factory. All the principal machines manufactured by the United Company for use in this country are manufactured at Beverly, and are shipped to shoe manufacturers in various States of the United States.

Cross-examination resumed:

The machines are also shipped from Beverly to a great many others than shoe manufacturers.

50 As to the foreign companies about which I have testified, the laws of most countries other than the United States at the present time require that in order that the patents of those companies may be kept alive machines must be manufactured under those patents in those countries. That is true of Canada, Great Britain, and France, and it was true in Germany until a few years ago. It is true of most of the continental countries.

Accordingly, the Canadian Company manufactures machines which are used in Canada, and it must do so in order to maintain

its Canadian patents; and that is true of each of the other foreign countries of which I have spoken, except Germany; and it was true in Germany up to the treaty that was negotiated within a few years.

Direct examination resumed:

The paper which you present to me purporting to be an agreement with the United Shoe Machinery Company and certain individuals, dated September 11, 1899, bears the seal of the United Shoe Machinery Company.

(Counsel for the United States then offered this agreement between the United Company and certain parties mentioned in it, relating to the sale of machinery in Australasia, although it is not mentioned in the petition. Counsel stated that the part regarded as material was a recital that "whereas the United Company has acquired control of the boot and shoe and leather working machinery made by the following named corporations doing business in said Boston, viz" (here follow names of the constituent companies of the United Company and of certain acquired companies) "and contemplates acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings except leather, linings, lasts, and finished boots and shoes," and further stated that it was offered only as an admission, as evidence of the intent of these parties in
51 forming the United Company. Counsel for defendants objected, on the ground it is not within the bill, is not mentioned in the bill, and ought not to be regarded as an admission. This preamble was admitted as an admission, with defendants' exception saved, and was marked "Plaintiff's Exhibit 189.")

(Counsel for the United States then offered an agreement between the United Company and the Keighley Company, a New Jersey corporation. That agreement was entered into on September 28, 1912, after the petition in this case was filed. It is the subject of a separate petition filed in January, 1913. By this agreement the Keighley Company granted to the United Company the exclusive right to lease, but not to sell, the Keighley Company's patented inseam trimming machine. The Keighley Company reserved the right to sell the machine, and the United Company granted to the Keighley Company the right to sell the machine under two patents owned by the United Company, and agreed to discontinue three pending suits brought by it for infringement of its patents by that machine. The agreement provided that the Keighley Company should not sell machines for less than a price stipulated. Individuals connected with the

Keighley Company agreed not to manufacture or deal, etc., in inseam trimming machines, except in accordance with the agreement. Counsel for defendants objected to the agreement as being after the date of the petition. It was excluded.)

The WITNESS. On March 1, 1911, we had 90,000 machines under lease. In the great majority of cases there is only one machine on a lease. We do not have any record by which we could find out how many lasting machines, for example, we have out on a certain form of lease.

We have put out the initial payment form of lease ever since the company was formed.

MAY 22, 1913.

Mr. GREGG. We will now take up the acquisition of the various businesses of individuals, partnerships, and corporations, referred to in the Government's petition. We have a large number of contracts and agreements entered into between the
52 United Company and individuals and corporations that they have acquired. The originals of these contracts and agreements have been in the possession of counsel for the United States and copies which have been compared will be introduced.

Mr. CHOATE. I waive all formality of proof, but I still want to have the court's attention fixed upon the proposition that these are only alleged to be the things done in carrying out a conspiracy of which there has not been any proof whatsoever.

Mr. GREGG. I first offer copy of an agreement dated March 1, 1899, between the United Company and Louis Goddu and others, transferring to the United Company about seventy-five per cent of the capital stock of the Goddu Sons Metal Fastening Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 60.")

I offer copy of an agreement dated June 8, 1899, between the United Company and Marshall Henry Pearson and Charles Bennion, of Leicester, England, providing for the formation of the British United Shoe Machinery Company, Limited, and for the transfer of the business of Pearson and Bennion, Limited, to the new corporation. The agreement also provides for the assignment to the new corporation of any subsequent inventions relating to shoe machinery made by Pearson and Bennion. Pearson and Bennion were to receive stock in the new corporation. The issued capital stock of the new corporation was £353,494, of which the United Company acquired £206,800.

53 (Copy of this agreement is marked "Plaintiff's Exhibit 61.")

Mr. GREGG. I offer copy of an agreement dated June 30, 1899, between the United Company and Silas Pierce and John M. Kingsbury providing for the transfer to the United Company of

a majority of the capital stock of the Corrugated Wire Fastening Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 62.")

Mr. GREGG. I offer copy of an agreement dated July 31, 1899, between the United Company and the Breach Manufacturing Company, granting to the United Company an exclusive license to manufacture certain machines for rounding or cutting soles or patterns for boots and shoes. The consideration is stated as $10,000 plus ten per cent of the gross proceeds of the sales of the said machines.

(Copy of this agreement is marked "Plaintiff's Exhibit 63.")

Mr. GREGG. I offer three copies of agreements between the United Company and Peter A. Coupal and William Gordon whereby the latter conveyed to the United Company certain machinery and appliances, for a consideration of $10,799.25, and agreed to enter the employ of the United Company. The vendors agreed that, so long as they should remain in the employ of the United Company, all inventions that they should make or acquire should be disclosed and explained to it.

(Copies of these agreements are marked "Plaintiff's Exhibits 64, 65, 66.")

Mr. GREGG. I offer copy of an agreement dated August 16, 1899, between the United Company and Timothy A. Bresnahan, transferring to the United Company the entire capital stock of $50,000, of the Boston Shoe Tool Company, and providing that said Bresnahan should not thereafter engage in the kind of business which had been carried on by the Boston Shoe Tool Company, or enter into or encourage any competition with the business formerly carried on by the Boston Shoe Tool Company, and would use his best efforts to purchase for the United Company the business of any persons, firms, or corporations engaged in carrying on business like that carried on by the Boston Shoe Tool Company. The United Company paid $72,000 in cash and preferred stock.

(Copy of this agreement is marked "Plaintiff's Exhibit 67.")

Mr. GREGG. I offer copy of an agreement dated October 9, 1899, between the United Company and Edwin T. Freeman, whereby the United Company acquired the

54

business, machinery, and letters patent of said Freeman relating to nailing machines for $11,000, and $4,000 to be paid in royalties, and said Freeman entered into an agreement not thereafter to engage in or to assist competition in shoe machinery with the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 68.")

PUTNAM, J. Do you claim, gentlemen, that this transaction of buying an interest in a nailing machine tends to show that this corporation was doing anything in restraint of trade?

Mr. GREGG. Our position, if the court please, is that all of these acts of acquiring the business of other concerns were all part of a plan to monopolize the shoe machinery business.

PUTNAM, J. All; big and little?

Mr. GREGG. Big and little.

I offer copy of an agreement dated October 10, 1899, between the United Company and George W. Freeman, providing for the transfer to the United Company of any interests which said George W. Freeman might have in shoe machinery and for the employment of said George W. Freeman by the United Company. The agreement provides that George W. Freeman will not thereafter engage in or assist others to engage in the manufacture or sale of boot or shoe working machines in competition with the United Company and that he will convey to the United Company any inventions relating to shoe machinery which he has made, but has not patented, or shall make in the future.

(Copy of this agreement is marked "Plaintiff's Exhibit 69.")

Mr. GREGG. I offer copy of an agreement dated October 11, 1899, between the United Company and Albert G. Brewer, whereby the United Company acquired said Brewer's inventions and improvements in heel breasting machines, for $250 and $5 royalty on machines put out by the United Company, and providing for the assignment of any future inventions relating to machines for breasting heels on the last made by said Brewer.

(Copy of this agreement is marked "Plaintiff's Exhibit 70.")

Mr. GREGG. I offer copy of an agreement dated October 24, 1899, providing for the acquisition by the United Company from certain named individuals of the business of the Globe Shoe Tool Company for $30,000 in cash and preferred stock.

(Copy of this agreement is marked "Plaintiff's Exhibit 71.")

55 Mr. GREGG. I offer copy of an agreement dated October 24, 1899, between the United Company, and Henry M. Loomer, of Boston, supplemental to plaintiff's Exhibit 71, providing for the employment by the United Company of said Loomer and containing a covenant by said Loomer that he should not thereafter engage in or assist competition with the United Company and would assign any subsequent inventions or improvements in shoe machinery made by him.

(Copy of this agreement is marked "Plaintiff's Exhibit 72.")

Mr. GREGG. I offer copy of a further agreement supplemental to Exhibit 71, dated October 24, 1899, with Ward Perkins, substantially similar in its terms to Exhibit 72.

(Copy of this agreement is marked "Plaintiff's Exhibit 73.")

Mr. GREGG. I offer copy of an agreement dated November 2, 1899, between the United Company and John Ritchie Company and John Ritchie, with their principal place of business at Quebec, Canada, engaged in the manufacture of standard screw machines, slugging machines, tacking machines, and others used in the manufacture of boots and shoes, whereby the United Company acquired their business for $15,000. The vendors agreed that they would not engage directly or indirectly at any time thereafter in any business in competition with the United Company or any of its controlled companies.

(Copy of this agreement is marked "Plaintiff's Exhibit 74.")

Mr. GREGG. I offer copy of agreement dated January 30, 1900, between the United Company and Edward B. Seaver, whereby the United Company acquired for $38,000 his business in manufacturing lasting machines.

(Copy of this agreement is marked "Plaintiff's Exhibit 75.")

Mr. GREGG. I offer copy of an agreement dated March 6, 1900, between the United Company and Erastus E. Winkley and Benjamin Phillips, whereby the United Company acquired their inventions in sole leveling machines, agreeing to pay to the vendors a royalty of $20 for each machine put out, and the vendors agreed to convey to the United Company all inventions or
56 improvements in sole leveling machines which they should thereafter make or acquire.

(Copy of this agreement is marked "Plaintiff's Exhibit 77.)

Mr. GREGG. I offer copy of an agreement dated March 19, 1900, between the United Company and the Stanley Manufacturing Company, engaged in the manufacture of machines known as McKay sewing machines, used in the manufacture of boots and shoes, whereby the United Company acquired the business of the Stanley Company for $86,500 in preferred stock of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 78.")

Mr. CHOATE. I don't think it should be assumed by the court that the paper means what the Government's petition says it means. I think it should be correctly stated to the court what the paper really is.

Mr. GREGG. This agreement provides—

"That the said United Company shall purchase from the said Stanley Company the stock of machines, parts and supplies which it now has on hand at Frankfurt, Germany, and in transit to

Frankfurt, and all accounts and bills owing to the said Stanley Manufacturing Company in Germany."

PUTNAM, J. What department of the business did this relate to?

Mr. GREGG. To the McKay sewing machines.

Mr. CHOATE. Where do you find any agreement about McKay sewing machines there, Mr. Gregg?

Mr. GREGG. It must be here somewhere.

Mr. CHOATE. The McKay Shoe Machinery Company did not make McKay sewing machines.

Mr. GREGG. I don't find anything in the agreement with regard to the McKay sewing machine. If it is not there and is so stated in the bill, it is an error.

Mr. FOWLER. I would call your honor's attention to this paragraph in the agreement:

"That the said Stanley Company will at once give up its branch office in Germany, so far as relates to the sale or disposal of shoe machinery or shoe manufacturers' supplies, and that the Stanley Company will not in the future establish an office, or maintain an agency or representative of any kind to solicit orders for the sale of such machinery and supplies outside of the United States of America, and will not export, or sell or dispose of to others for export, any boot or shoe machinery or supplies therefor outside of the United States except through the United Shoe Machinery Company, and except further as hereinafter provided."

57 MAY 22, 1913.

NELSON W. HOWARD, witness for the United States.

I am a lawyer, and I am in charge of the patent department of the United Company. I am familiar with the acquisition by the United Company of stock of the Goddu Sons Metal Fastening Company on March 1, 1899. The United Company did not acquire anything from the Goddu Sons Metal Fastening Company, but did acquire from Louis Goddu and his sons stock in the Goddu Company and some patents and patent applications. No machines or other property were acquired from either the corporation or the individuals. The Goddu Company was not and had not been engaged in any business in the sense of selling or leasing anything. They had constructed a loose nailing machine, a slugging machine, a tacking machine, and a standard screw machine, but they had not sold or leased any of them, so far as I know.

These machines were of the metallic type. The standard screw machine was intended for securing outsoles by a type of fastening known as standard screw wire. The loose nailing machine was intended primarily for nailing heel seats; the tack-

ing machine for laying outsoles. At that time the United Company was putting out commercial machines for doing the work for which the Goddu Company machines were intended. The Goddu Company was never acquired by the United Company. It has been in the hands of a receiver for some years.

I am not familiar with the agreement made in June, 1899, between the United Company and Marshall Henry Pearson and Charles Bennion, of Leicester, England, with respect to Pearson & Bennion (Ltd.), of Great Britain, as that transaction took place on the other side; but I think they were not engaged in business in this country.

The Corrugated Wire Fastening Company, a Connecticut corporation, had one machine, a tacking machine, and was doing a very small business in supplying wire for that machine. I believe they had not put out any of the machines for some years because it was completely out of date. It was a very
58 old machine. In June, 1899, the United Company had a machine for doing very much better work of the same character.

The United Company acquired the capital stock of the Corrugated Company. The consideration, which is stated in the agreement as $6,769.40, I think was paid in cash. That company was dissolved in 1906 under a general act of the Legislature of Connecticut, under which companies were automatically put to death if they did not make returns by a given date.

Q. Did it continue to do business up to 1906, when it was dissolved?

A. The only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine. They had not done any business in the way of supplying machines for some time, and there was no longer any demand for the machines, so that no business was done and no business could be done with that machine. The United Company continued to supply wire and parts for those machines. They have parts in stock to-day. There may be one or two, or possibly more, of those machines in use in the factories where they have stayed since this acquisition, but the business that was carried on in connection with that machine after the acquisition of the Corrugated Company consisted only in the supply of wire and parts for the machines that were still out.

At the time of the agreement in July, 1899, between the United Company and the Breach Manufacturing Company the Breach Company had a machine which was intended for cutting soles out of a side or strip of leather by a reciprocating knife

which moved up and down through the stock as it went around. All that the United Company acquired was a license to manufacture, sell, and lease those machines.

I think the Breach Company is not engaged in business now. I can not imagine their doing any business with that machine, and I do not believe the Breach Company has done any
59 business since the failure of the United Company to make anything out of its machine. That was some years ago. The United Company offered to turn back the patents to the Breach Company, and I believe it did so. The foreign patents, I think, had been allowed to lapse through lack of desire of the Breach Company to spend the money to keep them alive.

At the date of the agreement with the Breach Company, July, 1899, the United Company had no machines for doing the work for which the Breach machine was intended—no machine of that kind at all for that class of work. The United Company took Breach into its employ and for several years made strenuous efforts to develop something practical out of that machine. Breach worked on the machine during that period and spent a great deal of money, but finally came to a point where he could apparently do nothing more, and at that stage the machine was an entire failure as a commercial machine. Prior to the date of this license the United Company had no machine used for cutting out soles.

Referring to the machinery, tools, and appliances that were conveyed to the United Company in August, 1899, by Peter A. Coupal and William Gordan, of Boston, Coupal and Gordan were running a machine shop and doing a general machine shop business. They had one or two machines such as later were put out by the general department of the United Company, of which one was a machine for cementing parts of shoes together, such as channels of outsoles. A channel cementing machine applies cement to the channel lip, so that the lip will stick when it has been turned back to cover the stitch after the outsole has been sewed to the insole or to the welt. Prior to the conveyance from Coupal and Gordan the United Company was not engaged in putting out or manufacturing such machines as Coupal and Gordon were making and putting out, or machines for performing the same or similar work.

In August, 1899, the Boston Shoe Tool Company, the capital stock of which was acquired by the United Company from Timothy A. Bresnahan, was manufacturing and selling a patented edge trimming machine and a rotary edge setter, and
60 was also making and selling forepart and shank cutters for use on the edge trimming machine, and edge setting

irons for use on the rotary edge setter. The rotary edge setter was adapted only for the cheapest kind of work and never used on any other work. It could not be used with profit on any other kind of work.

A shank cutter is the tool on an edge trimming machine which trims the edge of the sole between the ball and the heel, known as the shank. Every edge trimming machine has a forepart cutter for trimming the sole around the forepart and a shank cutter for trimming the sole in the shank. The cutter which trims the forepart is not properly shaped to trim the shank.

An edge setting iron is a tool used on an edge setting machine, which is employed to finish the edge of the sole after it has been trimmed and after the blacking has been applied. The finish or shine that the edge has when the shoe is new is given to it by the edge setting operation, and the tool which operates upon the shoe in this operation is known as an edge setting iron. The contour of the edge setting tool must fit that of the cutter, and as in the case of cutters there are two tools, a forepart iron and a shank iron.

At the time of this acquisition the United Company had no machines for doing the work of either of the two machines acquired from the Boston Shoe Tool Company and it was not manufacturing any edge cutters or any edge setting irons.

Referring to plaintiff's Exhibit 68, the nailing machine which had been constructed by Edwin T. Freeman, of Boston, prior to October, 1899, and which I examined in his shop, was intended to insert the slugs or ornamental fastenings which are driven around the edge of a top lift of a heel for ornamental and wear-resisting purposes. The top lift of a heel is the layer of leather in the heel which is on top when the shoe is turned upside down, the position that the shoe occupies during the various bottoming operations. The ornamental fastenings close to the edge of the top lift are known as slugs. They are driven through
61 the top lift and one or more lifts next to it. The heel attaching nails, which hold the heel to the shoe, are inside of those slugs.

At the time of this acquisition the United Company was manufacturing machines for doing similar work. This mailing machine was the only machine that we obtained from Freeman, and no other tools or devices used in the manufacture of shoes were acquired from him.

Nothing was acquired by the United Company from George W. Freeman, of Boston, by the agreement made in October, 1899. He was the son of Edwin T. Freeman, about whom I have just testified, and the agreement was made with him at that time

simply because he was his father's son and had been engaged with his father in work upon his father's machine. It not infrequently happens that a son may be responsible for some of the inventing in a case like that. It was a matter of precaution. George W. Freeman entered the employ of the United Company at that time.

Prior to October, 1899, Albert G. Brewer, of Hopkinton, Massachusetts, had built one experimental heel breasting machine. Prior to that time the United Company was not putting out any machine for breasting heels of shoes or machines for doing similar work. We were experimenting with a machine at that time which was not commercial. Machines had been built and tried out, but the machine was not on the market as a commercial machine. That machine eventually proved to be an effective machine, after the invention which we acquired from Brewer had been embodied in our machine.

A heel breasting machine is used to trim the front end of a heel, which is rough after the heel attaching operation and has to be trimmed on all sides. The trimming at the front side, known as the breast, is performed by a heel breasting machine. In the heel breasting operation a knife cuts from the outer face of the heel down to the shank of the sole. In machines previously used the knife was carried down through the lifts of the heel by foot power, through connections with a treadle.

62 Prior to this purchase we were experimenting on a machine in which the knife was driven through the heel by power, and we owned the broad Heys patent on mechanism for automatically stopping the knife. Of course the stopping of the power-driven knife was a very delicate operation. The Brewer invention related to a machine of this type—that is, the automatic type—and his improvement was a device which stopped the knife when it came to the shank of the sole, so that it breasted the heel without cutting the shank.

The Brewer patent covered a better, a more sensitive, mechanism than we had for stopping the knife properly when it reached the shank, to prevent cutting into and possibly cutting through the shank.

In regard to the acquisition by the United Company (plaintiff's Exhibit 71) in October, 1899, of the business of James H. Reed, Alfred L. Barrett, Henry M. Loomer, Ward Perkins, and Ralph W. Burnham, copartners doing business under the name of Globe Shoe Tool Company at Boston, an edge cutter is another name for an edge trimmer, and I have previously explained the edge trimming process. Irons used in the manufacture of shoes are edge-setting irons, such as I have explained before. The

business of the Globe Shoe Tool Company was on the same line as the business of the Boston Shoe Tool Company, which had been previously acquired.

Mr. GREGG. In November, 1899, the United Company acquired the business of John Ritchie and John Ritchie Company, a corporation with its place of business at Quebec, Canada, relating to the manufacture of standard screw machines, slugging machines, tacking machines, and others designed and used for the manufacture of shoes, paying therefor $15,000. What is the standard screw machine? Just describe it briefly.

The WITNESS. A standard screw machine is a machine which secures the outsole to the insole of heavy, rough shoes by screwing a wire rotated at high speed through the outsole and
63 insole and then cutting it off.

The United Company did not acquire any slugging machines from John Ritchie or the John Ritchie Company. No slugging machines or tacking machines were being manufactured by them.

The John Ritchie Company was a concern manufacturing shoes. They had manufactured, prior to the date in question, one old standard screw machine, so called, that being the type of machine which preceded the rapid standard screw machine, the greatly improved machine then in use for that kind of work. I think that machine was not being used by the John Ritchie Company, but had been sold by them. They had not built, and so far as I know did not contemplate building, any more machines, but they were making wire for use on standard screw machines. They were selling that wire to lessees of the United Company, who were obligated by their leases to buy wire from the United Company.

It has sometimes happened that the United Company will find that a dishonest lessee, who has agreed to buy wire from the United Company, in payment of royalty for the use of a metallic machine, or, to be more specific, a standard screw machine, will buy wire from another concern at a lower price and use it on the United Company's standard screw machine. That was exactly what was happening in Canada. The John Ritchie Company were making and selling standard screw wire to lessees of the United Company, which, of course, was not getting any return whatever for the use of its machines during the period that the Ritchie wire was being used in them. The purpose of this transaction was to eliminate that dishonest situation in Canada.

At that time, and prior to this transaction, the United Company had been manufacturing standard screw machines for performing the same work as the one old standard screw machine

which had been made by the Ritchie Company, and had been furnishing wire for those machines.

Referring to plaintiff's Exhibit 75, from the Seaver Process Lasting Company, of Boston, a Maine corporation, the United Company acquired in January, 1900, a lasting machine
64 and a so-called pulling-over machine. At that time the United Company had lasting machines; and it had an experimental pulling-over machine but none had been put out. The Seaver machine, which was called a pulling-over machine, could be used for pulling over uppers, but it was slower than hand work.

After this acquisition I think none of the Seaver machines were put out by the United Company. I ought to qualify that—it is possible that machines of both types were put out. If manufacturers wished either of those machines they were undoubtedly supplied. I cannot tell what became of the Seaver Company, but it is not engaged in business now. What business the Seaver Company had was merged into that of the United Company at the time of the acquisition. I think the Seaver Company did not have any plant.

Mr. GREGG. With respect to the copy of the agreement which was introduced yesterday, entered into in February, 1900, between the United Shoe Machinery Company and certain persons connected with the Boston Blacking Company, I will withdraw the copy of the agreement which was introduced, for the reason that, after conferring with Mr. Fowler, we are of the opinion that there is no use in encumbering the record with that agreement, because it relates to blacking, a preparation for finishing shoes, rather than to machinery.

BROWN, J. Then the paragraph on page 37 is practically withdrawn?

Mr. GREGG. Yes, your honor.

DODGE, J. And do I understand you withdraw Exhibit 76?

Mr. GREGG. Yes, Exhibit 76, your honor.

BROWN, J. Do I understand that you also withdraw or abandon the allegation in the bill on page 37, beginning "in February, 1900", and concluding, on page 38, "are on its board of directors", just preceding the paragraph concerning the relations of the United Shoe Machinery Company with Winkley and others.

65 Mr. GREGG. Yes, sir.

BROWN, J. So that is out of the bill?

Mr. GREGG. Yes, your honor.

The WITNESS. In March, 1900, the United Company acquired from Erastus E. Winkley and Benjamin Phillips, of Lynn, Massa-

chusetts, patents on a leveling machine of the direct pressure type, which was developed by the United Company into the Atlas leveler, as it is known, a very important machine. The United Company did not acquire any machinery from Winkley and Phillips. They did not have any going machine. Winkley and Phillips were associated with the United Company, and this was a friendly arrangement by which the United Company acquired the right to use the inventions of their patents in its machine. Prior to the acquisition of these patents from Winkley and Phillips the United Company was not engaged in putting out sole leveling machines for McKay work. It was putting out leveling machines for Goodyear shoes, known among the trade as the Goodyear automatic sole leveling machine.

Referring to plaintiff's Exhibit 78, the machines, parts, and supplies at Frankfurt, Germany, which were acquired by the United Company in March, 1900, from the Stanley Manufacturing Company, a Maine corporation, were, I assume, of the same type that the Stanley Company was putting out in this country. The machines that it was putting out here were miscellaneous "general department" machines, of which the most important was a McKay sewing machine. The Stanley Company had a number of less important machines—a McKay channeling machine, Centennial splitter, impression stitch machine, an imitation stitch machine, a type of union edge setter, and a feather edging machine.

The United Company was then putting out no machine for doing the work of any one of those machines. It was not putting
66 out any McKay sewing machine. It was not putting out any channeling machine for McKay work. It was putting out channeling machines of various types for use on welt shoes. Those channeling machines were not used, and could not be used, were not in any way adapted to be used, on McKay shoes. The Stanley channeling machine was a McKay channeling machine, used only on McKay work, and not usable in any way on Goodyear work. The United Company was at that time putting out machines adapted for use in the manufacture of Goodyear shoes, and some of its machines were used both on Goodyear and McKay shoes, but with different organizations.

As to the Stanley edge setting machine, the only edge setting machine which the United Company then had was the rotary edge setter, which it had acquired from the Boston Shoe Tool Company and which was adapted only for the cheapest kind of work and was never used on other work. It was not capable of being used on other work with commercial profit, and only as an interesting experiment. The Stanley machine was of the

Union type, so-called, characterized by an oscillating edge iron instead of a rotating edge iron, as was used in the Boston Company machine. This oscillating edge setter is used on the better grades of work, for which the rotary machine is not adapted and is never used.

Mr. GREGG. I offer copy of an agreement dated November 1, 1897, between the Lincoln Sewing Machine Company and the Goodyear Shoe Machinery Company, whereby the Lincoln Company agreed to sell to the Goodyear Company certain of its property, including machinery, tools, jigs, patterns, drawings, etc.

(Copy of this agreement is marked "Plaintiff's Exhibit 79."

Mr. GREGG. I offer copy of an agreement dated April 6, 1900, between the United Company and the Lincoln Sewing Machine Company, whereby the Lincoln Company sold and assigned all rights and interests to which it was entitled from the
67 Goodyear Company under the agreement of plaintiff's Exhibit 79, for which the United Company paid $33,075, of which $2,450 was paid in cash and $30,625 in common stock of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 80.")

The WITNESS. By the agreement of plaintiff's Exhibit 80, the United Company acquired no machines. They had already been acquired by the Goodyear Company prior to the organization of the United Company. The agreement dated November 1, 1897, plaintiff's Exhibit 79, between the Goodyear Company and the Lincoln Sewing Machine Company provided, roughly stated, for payments by the Goodyear Company to the Lincoln Company proportionate to the amounts of the dividends declared by the Goodyear Company on its own stock. That agreement ran for forty-nine years. This transaction between the Lincoln Company and the United Company (plaintiff's Exhibit 80) was simply a liquidation of the obligation to make those payments which the United Company had inherited from the Goodyear Company. That was the only subject matter of this transaction. The United Company acquired absolutely nothing new.

Mr. GREGG. I offer copy of an agreement dated June 30, 1900, between the United Company and Theophilus King, Henry Tolman, and Eleazer Kempshall, owners of the majority of the stock of the Boston Fast Color Eyelet Company. This agreement provided for the formation of a new company, the United Fast Color Eyelet Company, with a capital of $1,500,000, and for the transfer of the business and assets of the Boston Fast Color Eyelet Company to the new company. King, Tol-

man, and Kempshall were to receive $155,000 of preferred stock of the new company, and the United Company $1,000,000 of the common and $145,000 of the preferred stock, and the United Company also agreed to pay King $35,000 in cash. The agreement further provided that the vendors agree to transfer inventions relating to covered eyelets or the manufacture or insertion thereof which they might make or acquire within a period of fifteen years after the date of the agreement.

(Copy of this agreement is marked "Plaintiff's Exhibit 81.")

The WITNESS. At the date of the agreement of plaintiff's Exhibit 81, neither the United Company nor any of its associated companies was engaged in the manufacture of eyelets or of machinery for manufacturing eyelets. The United Fast Color Eyelet Company is now engaged in business and always has been since that date. The name of the Boston Fast Color Eyelet Company was preserved in the United Fast Color Eyelet Company. That name was a very valuable asset; it had designated this type of eyelet since it was invented.

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Mr. GREGG. I offer copy of an agreement dated June 30, 1900, between Theophilus King, Henry Tolman, and Eleazer Kempshall and the United Company, whereby the United Company acquired from King, Tolman, and Kempshall 60,000 shares, a majority of the capital stock of the Enamel Eyelet Company, for which the vendors were to receive $75,000 in preferred stock of the United Fast Color Company. King, Tolman, and Kempshall agreed not to enter into any business in competition with said enamel eyelet business for the period of fifteen years, and to assign any inventions relating especially to enamel eyelets which they should make or acquire within said period of fifteen years.

(Copy of this agreement is marked "Plaintiff's Exhibit 83.")

(Copies of other agreements connected with the foregoing acquisition are marked "Plaintiff's Exhibits 82, 84 and 85.")

The WITNESS. Both the Boston Fast Color Eyelet Company and the Enamel Eyelet Company were engaged in business at that time in the manufacture and sale of eyelets; that is, the Enamel Company was endeavoring to engage in the manufacture and sale of patented enamel eyelets. Their enamel eyelets were of an entirely different type from the fast-color eyelet. The Boston Fast Color Eyelet Company was selling an eyelet, covered by a patent granted in 1896, which was much more expensive than the enamel eyelet and was used only on the highest grade of shoes, never at any time on more than ten per cent of the shoes made. The distinctive characteristic of the eyelet made by the Boston Company is the thick celluloid

covering which is molded over the flange of the metal barrel—that never wears down to the metal and always retains its color. To use an apt advertising expression, it "never wears brassy." The celluloid makes it expensive, so that it has never been used except in the better grades of shoes.

69 The enamel eyelet is of an entirely different type and is used in the cheaper grades of shoes. It is formed by coating the metal flange with enamel, that flange being formed with the desired contour. This enamel wears off after a time, leaving a brassy appearance. That, of course, is entirely out of the question in the higher grade of shoes, just as the fast color eyelet is out of the question in the lower grade, on account of its much greater cost.

As to whether an eyelet can be used on any kind of a shoe—yes, if one wishes to pay for an expensive eyelet in a cheap shoe. The eyelet manufactured by the Boston Fast Color Eyelet Company was much more expensive than the one manufactured by the Enamel Eyelet Company. I can't tell you at this time what would be the difference in cost between the eyelet put out by the Boston Fast Color Eyelet Company and the eyelet put out by the Enamel Eyelet Company; I should suppose two or three times as much. I can't tell you how much the Boston fast color eyelet costs; I would be glad to get the figures. I don't know how much the eyelets cost for a shoe; I have no occasion to know. If desired, I would be glad to find out. As to whether they would cost as much as a cent, I can't even guess; I have never had any occasion to investigate that.

There was no competition whatever between the Boston Company and the Enamel Company. The same people owned the two companies and the two acquisitions were one transaction.

Mr. GREGG. I offer copy of an agreement dated June 19, 1901, between John C. Rhodes and John B. Rhodes, doing business under the name of J. C. Rhodes & Company, and the United Company, whereby the business, all the assets and property, all the patents and inventions, all secret processes and other trade secrets of that concern were acquired by the United Company for $575,000 in its capital stock.

70 (Copy of this agreement is marked "Plaintiff's Exhibit 91.")

The WITNESS. In June, 1901, J. C. Rhodes & Company were engaged in the manufacture of a patented enamel eyelet, which was the one in general use at that time. All the eyelets about which I have testified were patented. Both the Rhodes eyelet and the Enamel eyelet were patented, and as a matter of fact

each company was infringing the other's patent. The Enamel Company's eyelet was never a commercial success.

PUTNAM, J. You would not deny that they were entitled legitimately to gather in a certain amount of eyelet business?

Mr. GREGG. I suppose they were entitled, the same as any other concern would be, to buy another branch of the business, but we have alleged in the petition that each and every one of these acts, all taken together, was a part of a plan to monopolize.

I offer copy of an agreement dated January 30, 1901, between Willard B. Hosmer, Sidney W. Winslow and the United Company, whereby the United Company acquired for its French and German subsidiary companies the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company, paying therefor approximately $25,000 in preferred stock of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 86.")

The WITNESS. The Bay State International Shoe Machinery Company was not doing any business in this country. The only business that it had done was in England. That company had a welter and a stitcher and, I think, a rough rounder. Possibly it had one or two others; I can't state that from memory. At that time the United Company had welters and stitchers. I don't know whether or not the Bay State Company was shipping machinery from the United States to foreign companies.

Mr. GREGG. I offer copy of an agreement dated September 20, 1900, between Simon Ross and the United Company.

71 Said Ross and one W. F. Harmon owned all the capital stock of the Ross-Moyer Manufacturing Company, of Cincinnati, Ohio. After reciting that the United Company had agreed to purchase all the shares of the Ross-Moyer Manufacturing Company, the agreement provided for the employment of Ross by the United Company, and for the conveyance by Ross to the United Company of inventions relating to shoe machinery which he had made but had not patented, and such inventions which he should thereafter invent within ten years. It also contained a covenant by Ross not to engage in or assist in competition with the United Company for a period of ten years.

(Copy of this agreement is marked "Plaintiff's Exhibit 87.")

The WITNESS. The Ross-Moyer Manufacturing Company had been engaged in business for many years and was putting out about twenty machines of what are now known as the general department type, including edge trimmers, edge setters, heel scourers, and a beading machine. At that time the United Company was putting out the rotary edge setter of which I have

spoken, and edge trimmers; but I think it did not have a heel scourer at that time. I can not enumerate all of the machines from memory but will be glad to produce a list. The acquisition of these machines was the first step toward the creation of the United Company's general department. The Ross-Moyer Company had quite a large business and had been agents for all the constituent companies of the United Company except the Goodyear Company. The Ross-Moyer Company is still engaged in business. I do not know whether Mr. Winslow is its president.

Mr. GREGG. I offer copy of a bill of sale dated February 2, 1901, given by the Swain-Fuller Manufacturing Company to the United Company.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 88.")

The WITNESS. The principal business of the Swain-Fuller Manufacturing Company was manufacturing and putting out a machine known as the Star leveling machine for turn shoes. It had some miscellaneous machines of the general department type, of which I have not a list. It was a very small business. At this time the United Company was not putting out turn leveling machines, and it would be impossible to use any machine that the United Company then had on turn shoes. The Star machine could not be used with success or with commercial profit on other work. It was too light and exerted too light a pressure for Goodyear work. The Swain-Fuller Company is not now engaged in business. Its principal machine, that Star machine, and such other of the general department type machines as the United Company needed in its business, were taken over by the United Company.

72

Mr. GREGG. I offer copy of an agreement dated February 15, 1901, between Mellen Bray and the United Company, whereby the United Company acquired control of the capital stock of the Globe Sewing Machine Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 89.")

Mr. CHOATE. We will agree that there was paid for that stock United Company stock of the value of $20,000.

The WITNESS. In February, 1901, the Globe Sewing Machine Company had a welting machine, a stitching machine, and an experimental rough rounding machine. At that date the United Company had machines for performing similar work. I think the Globe Company is not now in business. I have no doubt that it went out of business when it sold the patents on its machines to the United Company.

Mr. GREGG. I offer a copy of a bill of sale dated March 25, 1901, given by the Boot & Shoe Sole Laying Company to the United Company, of all the property, business, and good will of

the Sole Laying Company, including all its machinery, tools, special tools, patterns, patents, applications for patents and inventions.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 90.")

The WITNESS. The Boot & Shoe Sole Laying Company was manufacturing and putting out a patented sole laying machine known as the Boston sole layer. That machine was used, after the welting operation, for temporarily attaching the outer soles of Goodyear welt shoes, preparatory to the rough rounding and channeling operation and the outsole stitching. It is
73 extremely undesirable and is not permitted to drive any fastening through the outer soles of Goodyear welt shoes so that it has always been the practice to attach the soles temporarily for the purpose of holding them in place during those succeeding operations, by means of cement. This operation is known as sole laying. The sole is first coated with cement and then the machine presses the sole upon the bottom of the shoe by a properly shaped mold or pad, with sufficient pressure to conform the sole to the bottom of the last, which is then in the shoe. At the time of this acquisition the United Company had an inferior machine of a different type for doing this work.

The Boot & Shoe Laying Company is not now engaged in business; its business was taken over and developed by the United Company.

Mr. GREGG. I offer copy of an agreement dated December 14, 1901, between the United Company and Morley Button Manufacturing Company, a corporation engaged in manufacturing eyelets used in the manufacture of shoes.

(Copy of this agreement is marked "Plaintiff's Exhibit 92.")

The WITNESS. The Morley Button Manufacturing Company was primarily a button manufacturing company, manufacturing and selling buttons. In addition to this button business it was engaged in the business of manufacturing and selling a patented enamel eyelet. At that time one of the United Company's subsidiary companies was engaged in manufacturing and selling a patented enamel eyelet of a different type. The United Company acquired only the eyelet business of the Morley Company, and that company is now engaged in the business of manufacturing and selling buttons and similar articles as before. It is not now engaged in the eyelet business.

Mr. GREGG. I offer copy of an agreement dated February 15, 1902, between the United Company and Oliver A. Miller, engaged in the manufacture of treeing machines, whereby the
74 United Company acquired his treeing machine business for $160,000. The agreement provided that the vendor

should not at any time within fifteen years engage directly or indirectly in the business of manufacturing or dealing in treeing machines or parts thereof. However, the vendor reserved to himself the right to manufacture and sell domestic or retail boot or shoe trees, polishers or holders, and lasts, followers or foot forms.

(Copy of this agreement is marked "Plaintiff's Exhibit 93.")

(Assignment of Letters Patent, dated February 11, 1902, from Miller to United Company, and another supplementary agreement dated February 11, 1902, are marked "Plaintiff's Exhibits 94 and 95.")

The WITNESS. At the time of the acquisition of the business of Oliver A. Miller the United Company was not engaged in the manufacture of treeing machines. That business has been continued by the O. A. Miller Treeing Machine Company, of which Mr. Hannigan, a minority stockholder, is manager. The majority of the stock of the O. A. Miller Company is owned by the United Company.

Mr. GREGG. I offer copy of an agreement dated June 30, 1902, between the United Company and George H. Daniels, Silas E. Simonds, and Winslow M. Warren, owners of the capital stock of the Marlboro Awl & Needle Company, whereby the United Company acquired the business and assets of the Marlboro Awl & Needle Company, which was engaged in the manufacture of awls and needles used in the manufacture of shoes, the vendors agreeing to take stock in payment therefor in a new corporation to be formed to take over the going business.

(A copy of this agreement is marked "Plaintiff's Exhibit 96.")

Mr. GREGG. I offer copy of an agreement dated June 30, 1902, whereby the United Company agreed to employ George H. Daniels, mentioned in Exhibit 96.

(Copy of this agreement is marked "Plaintiff's Exhibit 97.")

75 The WITNESS. In June, 1902, the Marlboro Awl & Needle Company was making and selling needles for the McLay sewing machine, hand awls, and rawhide mallets. At that time neither the United Company nor any of its subsidiary companies was manufacturing needles of any kind or any hand awls or any rawhide mallets. To a very limited extent we were making some awls to be put into our own machines when they were shipped out. The business of the Marlboro Awl & Needle Company has been continued by the United Awl & Needle Company at West Medway, Massachusetts. I do not know who is president of the United Awl & Needle Company. I have no

reason to question the statement in the petition that Mr. Winslow is its president.

Mr. GREGG. I offer copy of an agreement dated September 25, 1902, between the United Company and Arthur Fuller, owner of the majority of the capital stock of the American Sole Laying Machine Company, engaged in the manufacture and sale of machines for laying or leveling the soles of shoes, whereby the United Company acquired the property of the American Company for $5,200.

The agreement further provided that Fuller should not at any time within ten years, directly or indirectly, engage in any business relating to the manufacture or sale of machines for laying or leveling soles.

(Copy of this agreement is marked "Plaintiff's Exhibit 98.")

The WITNESS. The American Sole Laying Machine Company were putting out a two-form sole laying machine which they were manufacturing under a license from the Tripp Giant Leveler Company under the Cutcheon patent. At this time the United Company was putting out an inferior sole-laying machine known as the Rotary Sole Layer, and was putting out the single sole layer which had been obtained from the Boot & Shoe Sole Laying Company, but the United Company was unable to make a double or two-form machine of that, because such a machine would infringe the Cutcheon patent, which had been litigated and sustained. We desired to turn this single machine into a double machine and we were able to do that after this transaction, in which we acquired the license which the American Company had under the Cutcheon patent. Counsel advised us that
76 this license was assignable. After this transaction the business of the American Company was carried on by the United Company in its Goodyear Department.

Q. And the American Sole Laying Machine Company was discontinued as a going concern? That corporation is not now engaged in business itself?

A. The mere corporate existence of that concern may have been discontinued.

Mr. GREGG. I offer copy of an agreement dated October 1, 1902, between the United Company and William J. Young, whereby the United Company acquired all his letters patent in all countries, other than the United States and the Dominion of Canada, relating to machines for use in the manufacture or preparation of heels. The agreement further provided in substance that the vendor should not engage, directly or indirectly, in competition with the United Company for a period of fifteen years in any country other than the United States and the Dominion of Canada, and

that he would convey to the United Company all inventions and improvements that he should make or acquire within the period of fifteen years in any country other than the United States or the Dominion of Canada relating to machinery for the manufacture or preparation of heels.

(Copy of this agreement is marked "Plaintiff's Exhibit 99.")

The WITNESS. The subject matter of this agreement with Young was a heel compressor, which compresses the heel before it is applied to the shoe, forcing the lifts together so that there will not be cracks between them. Young had preceded the United Company by several years in the development of a satisfactory heel-compressing machine.

The only thing acquired by the United Company in this transaction was Young's English and German patents, under which our foreign companies had agencies. At this time our foreign companies had been putting out Young's machines for a number of years. They had been agents for his machine. The United Company had not shipped a heel-compressing machine to England or Germany, the countries where Young's patents were taken, for a period of over ten years.

Under the requirements of the German patent law it was necessary, in order to maintain Young's German patent, to
77 manufacture his machine in Germany right after this time, and Young had no facilities for manufacturing machines in Germany, while the United Company had a factory.

We obtained nothing from Young except these foreign patents. At this time the United Company was just developing a heel compressing machine known as the No. 4 heel compressing machine and had put out some in this country, but had sent none of them abroad.

Mr. GREGG. I offer copy of an agreement dated November 20, 1902, between the United Company and George A. Smith, of Philadelphia, Pennsylvania, owner of the majority of the capital stock of the George A. Smith Machinery Company, whereby the United Company acquired the property, assets, and business of the Smith Company and agreed to pay therefor the inventory value of the property, the amount so fixed and paid being $38,790.79. The agreement further provided that the vendor would not within ten years engage in the business of making or selling shoe machinery or assist any other person in so doing.

(Copy of this agreement is marked "Plaintiff's Exhibit 100.")

The WITNESS. The George A. Smith Machinery Company was agent for the United Company machines, except the Goodyear machines, as it had previously, before the formation of the

United Company, been agent for all the predecessors of the United Company except the Goodyear Company. That business was taken over by the United Company. It was also putting out one machine known as the Boss spring heel scarfing machine, which was the only machine that it had. The United Company was not putting out any machine for doing similar work.

After the acquisition Mr. Smith continued his business in selling cut soles and findings, the part of the business which the United Company did not acquire. The rest of the business was continued by the United Company in its various departments.

Mr. GREGG. I offer copy of an agreement dated December, 1902, between the United Company and George A. Emerson and William R. Sampson, doing business under the name of George W. Emerson & Company, whereby the United Company acquired their business for $41,500, and the vendors agreed not to enter into competition with the United Company for a period of fifteen years, and to disclose to the United Company future inventions made within that period.

78

(Copy of this agreement is marked "Plaintiff's Exhibit 101.")

The WITNESS. The principal business of the firm of George W. Emerson & Company was manufacturing and supplying lasts and forms for sole leveling machines of the "Giant" type. The United Company was developing a machine of that type at that time. That firm was also manufacturing a tip scourer for use in repairing the tips of patent leather shoes, a power spring heel scarfer and a heel burnishing machine used for putting the bright finish on a heel, the last step in its manufacture.

In lasting patent leather shoes the patent leather is frequently broken around the toe and the tip scourer is used to remove the damaged enamel, as shown by defendant's' Exhibit 13, a shoe on which that machine has operated; the next step will be the application of another coat of enamel over the portion on which the machine has operated. A spring heel scarfer is used in the manufacture of the type of child's shoe known as a spring heel shoe, such as defendants' Exhibit 14. The machine bevels off the front end of the "spring heel lift," which is inserted between the heel end of the sole and the upper, so that the sole can be bent over the front end of the lift without too abrupt a bend.

The United Company or one of the companies controlled by it was putting out a patented heel burnishing machine comprising a metal wax applying tool provided with yielding metal fingers. Defendants' Exhibit 11 is one of the United tools. That was the only type of heel burnishing machine which the United Company was putting out. The Emerson machine, also patented, was of a different type, and had a soft-surfaced tool cov-

ered by canvas, a tool of very different character from the metal tool. Defendants' Exhibit 12 is one of the Emerson tools.

79 The United Company was putting out no machine for doing work similar to that of the Emerson tip scourer. The United Company had a machine for doing work similar to that of the Emerson spring-heel scarfing machine; it was the hand-operated machine which had been acquired from the Smith Company. The Emerson machine was a power-operated machine and the United Company did not have any power-operated spring-heel scarfing machine.

The Emerson Company has been discontinued as a going concern, but its business has been continued and is now carried on by the United Company in several departments.

Mr. GREGG. I offer copy of bill of sale dated July 1, 1902, of the T. A. Norris Machine Company, whereby the United Company acquired all machines, machinery, tools, jigs, etc., belonging to the Norris Company for $11,536.78.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 102.")

The WITNESS. The business of T. A. Norris Machine Company was chiefly in second-hand machines. They manufactured or had manufactured for them a tip punch, a welt-cutting machine, a McKay sewing machine, a McKay channeling machine, a heel-gouging machine, and a fairstitch loop-cutting machine.

PUTNAM, J. Did this company have any typical or leading machines, or simply dealing in whatever it could find?

Mr. GREGG. I think this company was more of a dealer than anything else, was it not, Mr. Howard?

A. Yes; the tip punch was their most prominent machine and one that the United Company was glad to have, as it had no tip punch at that time, and had no machine for doing similar work. This machine was for the purpose of forming ornamental perforations in the tips of the uppers. The United Company had no machine for doing work similar to that of the Norris welt-cutting machine, which is a machine for cutting leather into strips of the width of welting. Excepting the machines

80 and parts at Frankfurt, Germany, which the United Company had acquired from the Stanley Manufacturing Company, it was doing nothing with the McKay sewing machine.

Mr. GREGG. I offer copy of an agreement dated February 18, 1903, between the United Company and William B. Cross, owner of the majority of the capital stock of W. W. Cross & Company, Incorporated, whereby the United Company acquired its business of making and selling nails and tacks, for $50,000.

(Copy of this agreement is marked "Plaintiff's Exhibit 103.")

The WITNESS. At that time W. W. Cross & Company was making nails and tacks and was not making shoe machinery. So far as I know, neither the United Company nor any of its subsidiaries was at that time engaged in manufacturing nails and tacks that were used in connection with its machines.

Mr. GREGG. I offer copy of an agreement dated May 6, 1903, between the United Company and the estate of John K. Krieg and others, under which the United Company acquired the business of J. K. Krieg & Company, of New York, engaged in the manufacture and sale of shoe machinery and shoe manufacturers' goods, findings, etc. The agreement provided that the vendors should not for a period of fifteen years engage in the shoe machinery business, except as employees of the United Company, or except in selling supplies to retail shoe stores or cobblers.

(Copy of this agreement is marked "Plaintiff's Exhibit 104.")

(A letter dated January 23, 1903, from the estate of J. K. Krieg to the United Company, submitting a proposition for sale of the business of J. K. Krieg & Company to the United Company is marked "Plaintiff's Exhibit 105.")

The WITNESS. J. K. Krieg & Company were local agents for parts and supplies for United Company machines, except the Goodyear machines, and had been for years, having been local agents of the Consolidated & McKay Company and the
81 McKay Shoe Machinery Company before the United Company was formed. The United Company took over what they had as agents, and two or three machines which they were putting out in a small way, which were manufactured for them by other parties. These were a patented heel seat rounding machine, a Louis heel scarfing machine, and I think two or three types of embossing machines. The United Company was putting out a heel seat rounder of an entirely different type, which was simply an edge trimmer with a larger cutter. The Krieg machine was built especially for the work, and later we built that type of machine.

The Louis heel scarfing machine was used to cut from the grain side of the outsole a strip of leather to be bent up over the undercut breast surface of a Louis heel. That work required a specially constructed machine. The scarfer which the United Company had previously acquired did not perform that operation, being merely a very simple machine for beveling off the front edge of a spring heel lift. Defendants' Exhibit 15 is a sample of the product of the Louis heel scarfing machine. I think the United Company had embossing machines at that time. The Krieg Company was a little concern employing only five men.

Mr. GREGG. I offer copy of an agreement dated October 20, 1903, between the United Company and Joseph P. Curtis, whereby the United Company acquired his business and inventions in cementing machines, agreeing to pay $500 in cash, and royalties of $10 on each machine put out embodying his inventions, until the aggregate royalties amounted to $5,000. The agreement provided for the conveyance of future inventions made by Curtis relating to cementing machines.

(Copy of this agreement is marked "Plaintiff's Exhibit 106.")

The WITNESS. The Curtis machine was for the purpose of cementing a lining to a part of an upper. The United Company then had a machine known as a cementing machine, but it was for the purpose of cementing a tap sole to the outsole before the sole was attached to the shoe, and the Curtis machine could not possibly be used for that purpose. The United Company's machine could, under no circumstances, be used for the work for which the Curtis machine was intended. It was entirely unadapted for that work.

82

Mr. GREGG. I offer copy of an agreement dated January 1, 1904, between the United Company and Fred H. Perry, whereby the United Company agreed to employ Perry as an inventor for a period of not less than a year. Perry agreed to convey to the United Company any inventions and improvements which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 107.")

The WITNESS. Mr. Perry is now employed by the United Company.

Mr. GREGG. I offer copy of an agreement dated January 1, 1904, between the United Company and Joseph W. Leary, of Lynn, Massachusetts, whereby the United Company acquired from Leary his business of dealing in shoe machinery, devices and supplies, cement, blacking and stains, for a consideration of $3,052.72.

The agreement further provided that the United Company should employ Leary for five years, and that he should convey to the United Company and its successors all inventions and improvements which he should make or acquire within ten years from the date of the termination of his employment by the United Company, and that for the same period he would not engage in any business which competed or interfered with the business of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 108.")

The WITNESS. Leary was not manufacturing any machines. He was dealing in a very small way with second-hand stitching room machinery; that is, sewing machines for sewing together the parts of an upper before the bottoming room operations.

83 Leary also had a very small business in supplying cements and blackings to shoe manufacturers, and he was agent for the United Company's Amazeen skiving machine. He handled nothing but second-hand machines. So far as I know he never had in his possession any machines other than second-hand stitching room machinery and the Amazeen machine, which he was selling for the United Company.

Mr. GREGG. I offer copy of an agreement dated January 23, 1904, between the United Company and the F. G. Farnham Brush Manufacturing Company, of Honesdale, Pennsylvania, and Frank G. Farnham, whereby the United Company acquired the business and Letters Patent of the Farnham Company, engaged in the manufacture and sale of brushes, sleeves, collars, hubs, fillers, bristles, etc., used for finishing boots and shoes, paying therefor $25,915.

The agreement further provided that the vendors would not engage, directly or indirectly, or in any way assist in any competition, in any country, or financially assist any other person or corporation to compete with the United Company or its successors for a period of fifteen years, and that the vendors would convey to the United Company any inventions which they should make or acquire within fifteen years relating to brushes, fillers, hubs, sleeves, collars, bristles, and fibre used in the finishing of boots and shoes.

(Copy of this agreement is marked "Plaintiff's Exhibit 109.")

The WITNESS. At that time the Farnham Company were putting out Tampico brushes for the cut-glass trade. That was their principal business. They were also doing a very small business in shoe brushes.

The United Company was doing nothing in the cut-glass trade, but was putting out brushes obtained from the S. A. Felton Sons Company, and was also putting out sleeves, collars, and hubs. Those go with the brushes, as part of the brushes, to hold them together. The similar articles which the United Company was supplying were very inferior. Defendants' Exhibit 16 is

84 a sample of the Farnham brush with the sleeve and collar. Such brushes are used for cleaning and polishing on almost all parts of the shoe at one time and another, being constructed of different sizes and shapes and with different sorts of bristles for the various operations.

Mr. GREGG. I offer copy of an agreement dated May 2, 1904, between the United Company and the American Glue Company, whereby the United Company acquired the exclusive agency for the United States and Canada for the sale of all sandpaper made for or by the American Glue Company for use in the manufacture of boots and shoes. The agreement recited that the United Company had previously acquired a similar agency for Europe.

(Copy of this agreement is marked "Plaintiff's Exhibit 110.")

The WITNESS. I never heard of any agreement between the United Company and the Union Sandpaper Company, and never heard of Herman Behr. I do not have anything to do with the sandpaper business of the United Company and know nothing about it except as I learn about many of these things in the course of my business in the patent department. I do not know of any patents on sandpaper.

Mr. GREGG. I offer copy of an agreement dated January 1, 1904, between the United Company and Zachary Taylor French, of Boston, engaged in the development of machines designed and used for the manufacture of boots and shoes, whereby the United Company agreed to pay for the property transferred by the agreement the sum of $15,000 in annual instalments of $1,500 each. The agreement further provided that French should assign any inventions relating to shoe machinery made or acquired by him within ten years, and that he would not, during that period, engage in competition with the United Company.

Mr. CHOATE. There wasn't any property transferred. It was a settlement of an old royalty agreement.

(Copy of this agreement is marked "Plaintiff's Exhibit 111.")

The WITNESS. Mr. French had for a great many years been in the employ of the United Company and its predecessor, the Goodyear Company, as an inventor, and later as superintendent of the Goodyear factory on Albany Street in Boston. His inventions were covered by a number of royalty agreements.

85 He did not wish to move to Beverly when the plant there was opened about this time, and therefore desired to leave the employ of the company. A settlement was made of the royalties which would become due under his various contracts; and the agreement of plaintiff's Exhibit 111 incorporates the settlement which was made at that time.

I think that it was about this time that French left the employ of the United Company. He is now a consulting engineer in Boston.

Mr. GREGG. I offer copy of an agreement dated June 11, 1904, between the United Company and Herbert L. Kimball and

Irving A. Hadley, of Lynn, Mass., copartners under the name of Kimball & Hadley, engaged in the manufacture of needles, awls, and drivers, whereby the United Company acquired the business of Kimball & Hadley, paying therefor $4,750. The agreement provided that the vendors should not for a period of ten years become interested in or assist any business consisting in whole or in part of the manufacture or dealing in needles, awls, or drivers.

(Copy of this agreement is marked "Plaintiff's Exhibit 112.")

The WITNESS. The principal business of Kimball & Hadley was making Goodyear needles—that is, the curved needles used on the Goodyear welter and stitcher. They were also making curved awls for welters and stitchers. The awl on those machines makes a curved hole for the needle.

At this time the United Company was not making Goodyear needles or awls. It was putting them out, but it was buying them from others, including Kimball & Hadley. The United Company was making for its metallic machines straight awls, which make a straight hole for a nail, and bear no resemblance to the curved awl used in a welter or stitcher.

The Kimball & Hadley business has been continued by the United Company. The concern known as Kimball & Hadley was discontinued for a while. It started up again, after a time.

Mr. GREGG. I offer copy of an agreement dated June 28, 1904, between the United Company and William B. Arnold,
86 owner of the capital stock of the Arnold Machine & Supply Company, whereby the United Company acquired the business of the Arnold Company relating to cementing machines and devices for $500 cash and a certain royalty to be paid on machines thereafter manufactured during the life of the patents transferred. The agreement further provided that Arnold should not within fifteen years directly or indirectly engage in any business consisting in the manufacture or dealing in cementing machines or devices, and that Arnold should convey to the United Company any inventions or improvements which he should make or acquire within fifteen years relating to such machinery or devices.

(Copy of this agreement is marked "Plaintiff's Exhibit 113.")

The WITNESS. The Arnold Machine & Supply Company was engaged in manufacturing a patented machine for use in connection with a reinforced insole, known as the Gem insole. Defendants' Exhibit 17 is a Gem insole, showing the completed work. The Arnold machine was used for applying cement to the flesh side of the leather insole blank for the purpose of securing the reinforcing canvas. The machine was useful in connection with the Goodyear system. We had no machine of that kind.

It had never been the practice before this machine was invented to apply cement to the insole rather than to the canvas. What had been used before was not a cementing machine; it was merely a cement pot through which the canvas was drawn on its way to the table, where it was cut off and applied to a piece of leather.

We had a machine known to the trade as a cementing machine, but, as I have previously explained, that machine was for the purpose of putting cement on a tap sole to secure it to the outsole, that being done before the outsole is attached to the shoe. It was absolutely impossible to use that machine for cementing canvas to an insole. A machine had to be specially constructed for that purpose, and the Arnold machine was useful only for that operation on Gem insoles.

87 Mr. GREGG. I offer copy of an agreement dated October 25, 1904, between the United Company and Irving E. Booth and Quentin W. Booth, doing business under the name of Booth Brothers, at Rochester, New York, whereby the United Company acquired their business relating to perforating machines, for which it paid $2,400 in cash and agreed to pay royalties which were to continue until they should aggregate $7,600. The agreement provided that the Booths should not engage in the manufacture or sale of perforating machines during the term of the patents assigned.

(Copy of this agreement is marked "Plaintiff's Exhibit 114.")

The WITNESS. At that time the United Company had a gang perforating machine; that is, one that makes all the perforations with one operation. That gang machine was intended for and used only on tip work. The tools required for that machine are very expensive.

The Booth perforating machine was a single tool machine, which operated step by step, and was intended for perforating the edges of vamps or any portion of the upper which varied so much in contour that the expense of the gang tools would be absolutely prohibitive. The Booth machine could be used for tip work, but the gang machine could not be used for vamp work except at very great expense, which would make it absolutely impracticable, involving the loss of money on every pair of shoes. Furthermore, the United Company's machine could not be used for perforating vamps because it was not big enough. It would have to be made very much larger to accommodate dies which could perforate all around the edge of a vamp.

(A vamp perforated by the Booth machine and a tip perforated by the gang machine are marked "Defendants' Exhibit 18.")

Mr. GREGG. I offer copy of an agreement dated October 1, 1904, between the United Company and Leopold J. Courteau, of Brockton, Mass., whereby the United Company acquired an assignment of his inventions and patents relating to machines for holding the linings of shoes during the process of
88 pasting the outer leather to the lining. The consideration was ten per cent of the net selling price of each machine or the payment of $1,000 in cash.

(Copy of this assignment is marked "Plaintiff's Exhibit 115.")

The WITNESS. At that time neither the United Company nor any of its associated companies had machines capable of being used for that purpose. Nothing ever came of this agreement. We were unable after the most strenuous efforts to make a practicable machine. During our experiments Courteau was often consulted and finally confessed himself that he saw no way to make the machine practicable.

Mr. GREGG. I offer copy of an assignment dated November 1, 1905, from Oscar A. Campbell and Samuel H. Nichols, doing business under the name of the Brockton Supply Company, at Brockton, Mass., covering inventions relating to machines for pulling lasting tacks, for which the United Company paid $21,724.

(Copy of this assignment is marked "Plaintiff's Exhibit 116.")

The WITNESS. The United Company was not at that time a putting out machines for pulling tacks. It was developing a machine, but had put none out. The machine it was developing infringed the patent acquired at this time. This instrument refers to tack pulling-machines only. At that time Mr. Campbell was anxious to go out of business. Nichols entered the employ of the company.

Mr. GREGG. I offer copy of an agreement dated January 31, 1906, between the United Company and the Smith Lacing Machine Company, of Boston, engaged in the manufacture of machines for lacing uppers, known as Smith lacing machines, whereby the United Company acquired the property and assets of the Smith Company for $117,500, of which $50,000 was paid in cash and the balance was to be paid in royalties on machines thereafter manufactured. The agreement further provided that the vendor should transact no further business and should liquidate.

Mr. CHOATE. That is not the gist of the agreement. The United Company agrees to do everything it can to extend the sale of the Smith Company machines.

89 (Copy of this agreement is marked "Plaintiff's Exhibit 117.")

(A bill of sale relating to this transaction is marked "Plaintiff's Exhibit 118.")

The WITNESS. The lacing machine is a wonderful machine, embodying a large number of patented inventions for automatically lacing and tying the opposed eyelets of a shoe upper, preparatory to the lasting operation, for the purpose of maintaining the edges at just the right distance apart during the lasting and subsequent operations. In the lasting operation the tendency of the strain exerted upon the upper is to pull apart the opposed edges of the upper and spoil the appearance of the shoe. Defendants' Exhibit 19 shows the work done by the Smith lacing machine.

Prior to this the practice had been for girls to insert strings through the eyelets and tie the ends of the string. This was handwork. In the time I have been telling about the operation of the machine it would have laced thirty or forty uppers. The lacing and tying is done by the machine in one operation as quick as a flash. The United Company had no machine for performing this operation or for the purpose of holding together the tops of the uppers of shoes.

Mr. GREGG. I offer copy of an agreement dated January 31, 1906, between the United Company and the Metallic Heel and Counter Company, of Boston, engaged in the manufacture of metallic heels and counters and machines, whereby the United Company acquired that property for $119,820, of which $52,320 was paid in cash and the balance was to be paid in royalties on Smith lacing machines. The vendor agreed to transact no further business and to liquidate.

(Copy of this agreement is marked "Plaintiff's Exhibit 119.")

The WITNESS. The United Company acquired from the Metallic Heel and Counter Company patented machines used in the manufacture of a patented metallic heel and counter.
90 This was used on very heavy shoes worn by miners, quarrymen, and others engaged in work of that character. Defendants' Exhibit 20 is a shoe to which this metallic heel and counter has been attached. At that time the United Company was not manufacturing similar heels and counters, and had no machinery that could be used for that purpose; nothing at all like it.

Mr. GREGG. I offer copy of an agreement dated September 4, 1906, between the United-Xpedite Finishing Company and Zotique Beaudry, of Lynn, Mass., whereby the United-Xpedite Finishing Company acquired his inventions and improvements relating to heel burnishing and finishing machines, paying therefor $12,500 in cash. The agreement further provided that the

vendor should disclose to the United-Xpedite Company all inventions, improvements, and Letters Patent relating to heel burnishing machinery which he should thereafter make or acquire and that he would not within a period of fifteen years engage in manufacturing or dealing in heel burnishing machines.

(Copy of this agreement is marked "Plaintiff's Exhibit 120.")

The WITNESS. Fifty-five per cent of the stock of the United-Xpedite Company is owned by the United Shoe Machinery Company. At this time the United-Xpedite Company had a heel burnishing machine, but the Beaudry inventions covered appliances which could be added to the Xpedite machines corresponding to which the Xpedite Company had nothing at all. The Beaudry inventions, covered by several patent applications, embodied an entirely new idea. We also acquired from Beaudry some allied inventions which went into the same machine. We did not acquire any inventions relating to edge-setting machines, although he is now trying to sell some to us.

Mr. FOWLER. I offer copy of a bill of sale dated November 1, 1907, from Irving E. Booth and Quentin W. Booth, doing business as Booth Brothers, at Rochester, New York, to the United Company, whereby the United Company acquired the business, machines, and patents of said Booth Brothers for a consideration of $71,284.20. The agreement further provided that the vendors should not within fifteen years engage in or assist in the manufacture or sale of machinery relating to the manufacture of shoes.

91

(Copy of this bill of sale is marked "Plaintiff's Exhibit 121.")

(Copies of supplementary agreements relating to this transaction, including an assignment of patents, an assignment of a license under an application for United States patent, and an assignment to the United Company of the rights acquired by Booth Brothers under an agreement with Thomas G. Plant dated May 11, 1907, are marked "Plaintiff's Exhibits 122, 123, and 124.")

The WITNESS. One of the machines acquired from Booth Brothers was a fudge edge making machine, a new patented machine for simultaneously making imitation stitches on the upper surface of the welt and setting the edge; that is, burnishing or polishing the edge. Defendants' Exhibit 30 is a shoe which has been operated upon by that machine.

Booth Brothers had a wheeling machine for making imitation stitch impressions. The Booth stitch burnishing machine burnished the impression made by the wheeling machine by means of a tool that was reciprocated longitudinally of the tool, crosswise of the welt. Those were used on welt shoes. De-

fendants' Exhibit 22 is a shoe which has been operated on by the stitch burnishing machine.

The Booth upper shaping machine was an ingenious patented device for holding the upper portion of a cloth topped shoe to facilitate the cleaning of the cloth tops, which get dirty in the process of manufacture Booth Brothers also had several machines for turning and beading uppers of shoes, of which the best was the Columbia.

92 The United Company had a wheeling machine, also an upper-beading machine which was particularly adapted for heavy work, although it could be used for light work. The Columbia machine made by Booth Brothers was a much better machine for light work. The United Company had none of the other machines which I have mentioned. The Rochester lacer was not acquired from Booth Brothers, but is put out by the Boston Machine Works.

The Booth business was continued by the Booth Brothers Company in Rochester in the same plant. It is controlled by the United Company.

93 Mr. FOWLER. I offer copy of an agreement dated December 1, 1908, between the United Company and William B. Rice, Harry L. Rice, John H. Richardson, and the Richardson Shoe Machinery Company, whereby the United Company acquired for $80,000 all of the capital stock of the Richardson Company, a concern engaged in developing and dealing in shoe machinery, especially McKay sewing machines and machines for dieing out leather, including clicking machines. The agreement provided that the vendors would not for a period of ten years engage directly or indirectly in the manufacture of or dealing in any machinery which should interfere or compete with the business of the United Company.

Mr. CHOATE. "With the business of the said Richardson Company or of the said United Company in such machinery?"

Mr. FOWLER. That of course is what the instrument shows and is correct. It further provided that the vendors should convey to the United Company inventions or patents relating to such machinery which they might make or acquire within a period of ten years.

(Copy of this agreement is marked "Plaintiff's Exhibit 125.")

Mr. FOWLER. I offer copy of an agreement dated December 1, 1908, between the United Company and John H. Richardson, a party to Exhibit 125, whereby the United Company agreed to employ Richardson at a salary of $2,500 per annum. The agreement further provided that Richardson should not within a period of ten years after the expiration of such employment

engage in competition with the United Company in the business of dealing in any shoe or leather working machinery or devices; and that he would convey any inventions which he might make or acquire during that period to the United Company.

(Copy of this agreement is marked "Plaintiff s Exhibit 126.")

The WITNESS. The Richardson Shoe Machinery Company had a greatly improved McKay sewing machine; that is, a McKay sewing machine which had been adapted to do better work with greater speed by their inventions.

94 At that time the United Company was putting out the old McKay machine and also a new one called the model B for doing the same work. The work of the Richardson machine was a great deal better. Both types were being used by shoe manufacturers. At that time the United Company was putting out the Richardson machine abroad, and not its own machines. Both companies were leasing their machines in this country.

The Richardsons did not manufacture any other machine. The petition refers to clicking machines, but that was only an experimental machine in which the Richardson Company had a half interest through a contract with the Essex Machine Company. The machine has never become commercial. The United Company cannot manufacture it because it is controlled by an outside concern.

Mr. FOWLER. I offer copy of a bill of sale dated April 30, 1908, from the Carver Cotton Gin Company conveying to the United Company that part of its business which related to shoe machinery. $16,883.79 was paid in accordance with an inventory of the stock. The agreement provided that the vendors should not within fifteen years compete with the United Company in manufacturing or dealing in shoe machinery.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 127.")

The WITNESS. The particular machine acquired by this purchase was the Acme leveling machine, together with the patterns and tools for making it. This machine was especially adapted for leveling sample or freak shoes, as the movements of the machine were controlled entirely by hand.

The United Company's Goodyear automatic leveler was entirely automatic and had to be adjusted for all sizes and all shapes of lasts. That machine is useful on the general run of shoes going through a shoe factory, while the Acme machine is used on freak shoes and samples where the size and shape

95 change with almost every shoe. Such shoes could be leveled on the Goodyear machine, but probably with the expenditure of five or six times as much time on the part of the operator.

The Carver Company also had a vamp skiving machine particularly adapted for forming a bevel on heavy upper stock. The United Company had no machine corresponding to that machine. The United Company's Amazeen skiving machine was adapted for handling lighter leather, but was not adapted for heavy upper leather, such as the Carver vamp skiver was particularly equipped to handle. The Amazeen would not handle heavier leather successfully.

The Carver Company's Davis leatherboard skiver was for skiving leatherboard counters, the counter being the stiffening piece that goes in above the heel to keep the shape of the shoe. Their counter dividing machine cut up a piece of leatherboard into strips of the right width for counters. The United Company had no machines for doing the work of either of these two machines.

The United Company had a heel breaster and an edge setter, but I don't think it got such machines from the Carver Company.

Mr. FOWLER. I offer copy of an agreement dated January 20, 1909, between the United Company and Harry L. Rice and Fred LaChapelle, whereby the United Company acquired the properly described in the agreement for $10,000 in cash. The agreement provided that the vendors should convey to the United Company all inventions which they should make at any time within ten years relating to any methods, machinery, mechanisms, tools, or devices intended for use in the manufacture of boots and shoes, and that neither of them would, directly or indirectly, engage in any business which would interfere or compete with the business of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 128.")

The WITNESS. Under this agreement the United Company acquired an experimental welting machine embodying a patented invention radically new. This machine put an
96 extra thread on the single thread side of the chain stitch formed by the machine, as shown in defendants' Exhibit 23, which comprises two illustrations of the improvement. That was entirely new. The purpose was to strengthen the "between substance," that is, the rib which projects from the insole and holds the upper to the shoe. In one sample of the exhibit the stitch is made loose and the extra thread is black. The other sample illustrates the stitch as it would be made in the manufacture of a shoe.

One experimental machine was being put together by these people; it had never been used in a shoe factory. The machine had not been put on the market at all. The United Company

has not yet put it on the market; it is still experimenting with this machine and has had it out to try in shoe factories two or three times. It takes a long time to develop one of these machines. No other machine was acquired by this purchase. The United Company was manufacturing and leasing two or three varieties of welting machines at this time, but without this improvement.

Mr. FOWLER. I offer copy of an agreement dated February 1, 1910, between the United Company and W. Eugene Ellis and Everett D. Chadwick, whereby the United Company acquired all the capital stock of the Ellis Lacer Company, a corporation engaged in developing and dealing in devices for temporarily securing together the tops of laced shoes while the same were being lasted, for a consideration of $125,000 in cash. The agreement further provided that the vendors would not, directly or indirectly, engage in any business in competition with the United Company, and that they would convey to the United Company all inventions which they might make or acquire within five years, adapted for the purpose for which Ellis lacers were designed.

(Copy of this agreement is marked "Plaintiff's Exhibit 129.")

97 The WITNESS. By this agreement the United Company acquired a wire lacing device, shown in defendants' Exhibit 24, a temporary fastening device for holding at a proper distance apart the opposed eyeletted edges of a shoe during the lasting and subsequent operations. This was not a machine, and the only machinery acquired was a machine for making the wire lacer in our own factory. We did not sell or lease this machine, but furnished the product of the machine to the shoe manufacturers.

The United Company was not then producing any wire lacing device. It is now putting out this Ellis lacer in large quantities. This was all the United Company acquired by this purchase, except the very valuable patents which control the Ellis lacer.

Mr. FOWLER. I offer copy of an agreement dated February 3, 1910, between the United Company and Alexander H. Lewis and Alfred J. Becht and others, whereby the United Company acquired for $60,000 cash the capital stock and business of the Wentworth Company, of Cincinnati, Ohio, a corporation engaged in the manufacture and sale of machines used in the manufacture of shoes. The agreement provided that the vendors would not within ten years engage in the business of manufacturing or deal-

ing in any machinery of the kind previously handled by the Wentworth Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 130.")

The WITNESS. By this purchase the United Company acquired a machine for beating heel seats and a shank sticking machine.

After the lasting operation the edge of the upper and counter around the heel portion of the shoe stick out from the insole too far to allow the outsole to be placed on it smoothly. The heel seat beating operation is to prepare the heel end of the shoe for the outsole.

A shank sticking machine is used for attaching the shank piece to the insole by cement, the purpose of the shank being to stiffen the shank portion of the shoe. In Goodyear shoes all
98 metal fastenings are avoided so far as possible and this machine avoided the use of tacks to secure the shank to the insole. We did not get any other machines in this transaction.

At that time the United Company was manufacturing a heel beating machine which flattened the heel by hammer blows. That machine was discarded some time ago. The Wentworth machine had a rotary tool much like the Xpedite heel burnishing tool of defendants' Exhibit 11. That tool was in constant engagement with the work and it just flattened the heel down but did not beat the heel. The Wentworth tool had yielding fingers like the Xpedite tool, and really amounted to two Xpedite tools put together, so that it rubbed inwardly on each side of the heel. The Wentworth machine was successfully used on the Xpedite patents.

The United Company had no commercial shank sticking machine. It was experimenting on one with difficulty, because the Wentworth Company had a patent on theirs. The United Company eventually combined the best features of its experimental machine and the best features of the Wentworth machine in the machine which it is now putting out.

The business formerly carried on by the Wentworth Company was transferred to and carried on by the United Company.

Mr. FOWLER. I offer copy of a bill of sale dated February 23, 1910, from the B. F. Sturtevant Company to the United Company, whereby the Sturtevant Company conveyed to the United Company its business of manufacturing and dealing in peg wood and wooden shanks. The consideration was $52,185.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 131.")

The WITNESS. By this purchase the United Company acquired a source of supply for the peg wood which it supplied for its

Davey pegging machine, and for the wooden shanks which it supplied in its findings department. The Sturtevant Company had a machine for making this peg wood and making shanks, but no machines that are used in the manufacture of shoes were obtained in this transaction.

Mr. FOWLER. I offer copy of an agreement dated September 30, 1910, between the United Company and Thomas G. Plant, whereby the United Company acquired all the inventions and patents, machinery, mechanisms, tools, and devices owned and controlled by Plant, and designed and adapted for use in the manufacture of shoes; and also a majority of the capital stock of the Thomas G. Plant Company, a shoe manufacturing corporation. The agreement further provided that Plant should assign to the United Company any inventions relating to shoe machinery which he should make or acquire within fifteen years, and especially that he would transfer the Letters Patent and applications for Letters Patent referred to in schedules attached to the agreement.

The agreement further recited that Plant was unwilling to sell his inventions and patents except upon the condition that the purchaser would also purchase all said shares of corporate stock, machinery, and other personal property above referred to, and would also enter into certain undertakings and agreements in reference to specified contracts and agreements of said Plant, and would compromise and settle all controversies and claims existing between the purchaser and said Plant by the dismissal of pending suits and the execution of mutual releases.

(Copy of this agreement is marked "Plaintiff's Exhibit 132.")

(Copy of a bill of sale dated September 30, 1910, from Thomas G. Plant to the United Company, transferring stock in the Thomas G. Plant Company, with certain memoranda attached thereto, is marked "Plaintiff's Exhibit 133.")

99

100 (Copy of a bill of sale dated September 30, 1910, transferring patents and inventions referred to in plaintiff's Exhibit 132, is marked "Plaintiff's Exhibit 134.")

(Copy of an agreement dated September 30, 1910, whereby the United Company agreed to indemnify said Plant in respect to any claims against him which might arise out of an agreement dated January 26, 1910, between said Plant and the Keighley Company, together with a copy of said agreement, is marked "Plaintiff's Exhibit 135.")

(Copy of a bill of sale dated September 27, 1910, transferring to the United Company all the right, title, and interest of Thomas G. Plant in certain letters patent and inventions enu-

merated in a list contained therein, is marked "Plaintiff's Exhibit 136.")

(Copy of a general release dated September 30, 1910, from Thomas G. Plant to the United Company, is marked "Plaintiff's Exhibit 137.")

(Copy of an agreement dated September 30, 1910, whereby Thomas G. Plant assigned to the United Company his contract to buy the business of Charles P. Stanbon, is marked "Plaintiff's Exhibit 138.")

(Copy of a general release dated September 30, 1910, from the United Company to Thomas G. Plant is marked "Plaintiff's Exhibit 139.")

(Copy of an agreement dated September 30, 1910, whereby the United Company assumed an agreement between Thomas G. Plant and the Stanley Manufacturing Company, is marked "Plaintiff's Exhibit 140.")

(Copy of an agreement dated September 30, 1910, qualifying a general release given by the United Company to Thomas G. Plant under date of September 23, 1910, is marked "Plaintiff's Exhibit 141.")

101 (Copy of an agreement dated September 30, 1910, whereby Thomas G. Plant assigned to the United Company two contracts, one with the Stanley Company and the other with the Stanley Manufacturing Company, is marked "Plaintiff's Exhibit 142.")

Mr. FOWLER. Your honors, in regard to the Plant transaction, we desire to examine our own witness; that is, we will have a witness of our own on the stand with reference to that, upon whom we desire to rely, and we do not wish to examine this gentleman in regard to that transaction.

I offer copy of an agreement dated November 22, 1910, between the United Company and Adam H. Prenzel, whereby the United Company acquired from Prenzel all of his inventions and patents relating to certain machines used in the manufacture of turn shoes for $8,000 cash and certain royalties on machines manufactured under said letters patent until they should have aggregated $75,000.

The agreement further provided that the vendor should convey to the United Company all inventions, improvements, and letters patent which he should thereafter make or acquire relating to the class of machines covered by the agreement.

(Copy of this agreement is marked "Plaintiff's Exhibit 143.")

The WITNESS. By that agreement the United Company acquired several machines which Prenzel had invented for use in producing a novel patented spring heel shoe, entirely different

from any spring heel shoe ever before known. It also acquired a machine for use in producing an infant's shoe, known as a "cack"; defendants' Exhibit 25 is a cack shoe. That machine was used, after the shoe had been finished, to press down the heel end of the sole so as to form a little heel, and at the same time it pressed in a heel seat piece to fill the space made by pressing down the heel end of the sole.

102 The numerous Prenzel inventions related to turn shoes and for the first time made it possible to sew the sole to the upper all the way around and produce a satisfactory product. Defendants' Exhibit 26 is a turn shoe made according to Prenzel's novel method. According to prior processes the heel end of the sole had not been sewed to the upper, and after the shoe was turned the heel end of the sole was nailed to the upper and to a heel seat piece put in to receive the ends of the nails. Defendants' Exhibit 27 is an old style spring heel shoe such as was made before the Prenzel improvements. Spring heel shoes are turn shoes.

The machines I have mentioned were the only machines acquired from Prenzel. The United Company had no machines for performing the special operations which were performed by the machines secured from Prenzel. It puts those machines out now and they are used by manufacturers.

Mr. FOWLER. I offer copy of an agreement dated December 19, 1910, between the United Company and Maurice V. Bresnahan, William H. Bresnahan, and John J. Donlan, doing business under the name of M. V. Bresnahan & Company, engaged in the sale of shoe machinery, whereby the United Company acquired the business of said concern for $25,000 in cash. The agreement provided that the vendors should enter the employ of the United Company and that none of them should engage, within ten years after the termination of their employment, in any business relating to the manufacture or sale of shoe machinery or devices, or any business which would in any way compete with the business of the United Company. The agreement further provided for the assignment to the United Company of any inventions or patents relating to shoe machinery which any of them should make or acquire within ten years after the termination of said employment agreement.

Mr. CHOATE. All of the parties entered the employment of the company—Maurice and William Bresnahan and Donlan.

103 Mr. FOWLER. Yes; it appears that they all entered the employment of the company.

(Copy of this agreement is marked "Plaintiff's Exhibit 144.")

The WITNESS. By this purchase the United Company acquired an experimental lasting machine embodying some inventions which the United Company itself was using in an experimental machine that it had out. It also acquired a heel burnishing machine embodying a novel patented device for spraying the wax on the heel burnishing tool.

The transaction further involved the settlement of a large number of suits which had been pending for many years between the United Company and Bresnahan's concern in the earlier days before he sold out his interests to Plant.

No machines were acquired from that concern other than the two I have named. The United Company did not then acquire, and never acquired from that concern, any leveling machine, sole layer, molders, or welting machine, or anything of that kind.

At this time the United Company was not making the machines acquired from the Bresnahan concern; they were patented machines. The United Company was making lasting machines and heel burnishing machines, but they did not accomplish the same results as the Bresnahan machines, because they did not have the patented inventions that were in the Bresnahan machines. The Bresnahan lasting machine was only experimental.

The United Company is experimenting with machines constructed under both patents acquired from Bresnahan, but has not yet put out any machines. There has not been time yet to make the machines commercial. The United Company has an experimental lasting machine running, embodying the inventions acquired from Bresnahan.

Mr. FOWLER. I offer copy of a bill of sale dated April 2, 1911, from Charles P. Stanbon to the United Company, whereby the United Company acquired for $122,735.82 the business of said Stanbon, who had been engaged, under the name of Charles

104 P. Stanbon & Company, in the manufacture and sale of machines used in the manufacture of shoes. The vendor agreed to enter the employ of the United Company.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 145.")

The WITNESS. The most valuable thing acquired by the United Company in this transaction was a channel cementing machine, constructed particularly for cementing the channels of the soles of McKay sewed shoes. The machine was characterized by a device which lifted the channel lip off the body of the sole into the path of a cement-applying brush. The United Company had been in interference with Stanbon in the Patent Office and had lost before the Court of Appeals, the tribunal of

last resort, and had been unable to get out a satisfactory machine for cementing the channels of McKay shoes.

The United Company also acquired a very valuable folding machine, on which applications for patents were pending. This machine was of the step-by-step type—that is, after the upper had been skived, the machine was used to turn it over and press it down step by step. It was a very valuable machine which we are getting ready for the market.

We also got a perforating machine of the step-by-step type. This machine was similar to the one that we got from Booth, but it was capable of doing different work and it was faster than the Booth machine. It was not so good as the Booth machine on curved work, but was much faster on substantially straight work.

At this time the United Company was putting out an inferior channel cementer, and the Booth perforating machine, which was different from the Stanbon machine in the particulars I have mentioned. We were not putting out any folding machine.

(The following statements were made by counsel in the course of a discussion of the question:

Q. Mr. Howard, hasn't your company purchased a great many patents that have not been mentioned in this examination as yet? I am not calling your attention to any specific patent.

Mr. CHOATE. Mr. Gregg spent some months examining our books and papers, all that he wanted.

105 Mr. GREGG. These purchases that are recited in the Government's petition were taken from the agreements that we have here and the minutes of the board of directors and of the executive committee. What we are attempting to ascertain now is whether they bought out any other concern of which no record was made in the minutes. These original agreements that we have here resulted from an examination of those two records.)

Cross-examination:

The channel cementing machine acquired of Stanbon was particularly adapted for use on McKay shoes, and was not adapted for use on other kinds of shoes. It was a commercially successful device. We had been using the Stanbon device ourselves prior to the declaration of the interference, but after the declaration of the interference and the opening of the statements setting forth the respective dates of invention, the Patent Department immediately instructed that this device must be removed from all of our machines, and it stayed off all of our machines until the Stanbon applications were acquired. Prior to this transaction we had been trying all sorts of devices which

we thought would be free from infringement, but did not have anything that was satisfactory. We were very glad to be able to adopt this Stanbon device, and after its acquisition it was immediately furnished to customers and has been supplied in large numbers.

The Stanbon perforator was really adapted for doing embossing work. Embossing is going part way through the stock, ornamenting rather than perforating, the tool being heated. The United Company's Booth perforator was not adapted for doing embossing work. Some manufacturers liked one machine and some liked the other, depending upon the kind of shoes that they were producing. The perforating and embossing operations are solely for the purpose of making the shoe look better and have no useful purposes.

The United Company had no folding machine of any description. The Stanbon machine was only experimental, had
106 not been put out, and was a long way from a commercial machine when we took it. We have not got the machine quite commercial yet. Since we acquired it we have constantly been at work on it to perfect and get it into commercial condition. We have built several machines and have put out one machine after another, and we think we have got it pretty nearly right now. We have seldom worked more vigorously upon a machine than we have upon that one.

All the machines acquired from Stanbon are covered by patents.

This Stanbon transaction was carrying out the contract which Plant had made with Stanbon and which the United Company had assumed, as shown by plaintiff's Exhibit 132.

In connection with the M. V. Bresnahan & Company transaction there had been a large number of suits, as many as eight or ten, between Bresnahan and the United Company which had been pending for a number of years, nearly all suits for infringements of patents. That litigation was all pending at the time of this acquisition.

The Bresnahan experimental lasting machine was not being marketed at the time by Bresnahan and he was only trying it out. It has not yet reached the commercial stage.

The Bresnahan improvement on the heel burnishing machine related to the application of the wax. The United Company went to work to make that improvement commercial and give it to its customers. There was a patent application pending on this invention, and the United Company had nothing that would do what the mechanism embodying this invention would do.

The Prenzel method of sewing the spring heel seat in on a turn shoe was obsolutely new and a very great improvement over the old method. It had not existed before Prenzel made his invention. It was a shoe invention rather than a machine invention. It was patented, and immediately after the acquisition the United Company developed it and offered it to its customers.

107 Answering your general question as to the dealings of the United Company with its customers, in all cases the United Company furnishes all its machines and devices and improvements to all customers on exactly the same terms. They are all treated exactly alike, whether great or small, and all are offered the same opportunities and the same terms.

Before the acquisition of the Sturtevant Company the United Company had been buying from others, including the Sturtevant Company, the peg wood which it required for its pegging machines and the shank wood; that is, wooden shanks ready for use in shoes, which it supplied to its customers. By peg wood I mean peg wood in the form of a strip rolled up into coils, ready for use in our pegging machines.

By the acquisition of the Sturtevant plant we acquired a permanent source of supply from which we could get all the peg wood and shank wood that we needed, for which we were before entirely dependent upon others. That business has been continued and customers furnished with the product just as before.

The shank sticking machine and the heel seat beating machine of the Wentworth Company were both patented machines, and we obtained the patents at the same time. Before the invention of the shank sticking machine, the shank sticking operation had been done by hand. This machine was a new labor-saving device. We combined the best features of the Wentworth machine and of ours and made a better machine than either, and furnished that machine to customers.

Patent No. 929,178, named in schedule B of the Wentworth agreement, plaintiff's Exhibit 130, is the patent on the shank sticking machine. On that schedule are also enumerated two patents numbered 844,293 and 854,320, and possibly more, which cover the Wentworth shoe beating machine.

The Ellis lacer is being put on the market to our customers, and everybody who wants it, in large quantities. This was the first metal lacer that was of any commercial value, the first that ever got into use. It replaced the hand method.

108 Nearly all of the patents enumerated on schedule C of Exhibit 129, which is a list of patents owned by the Ellis Lacer Company, read upon all forms of the lacer. Some

read upon the form known as the Blucher lacer, and some read only upon the adjustable lacer, but most of them read upon all forms and cover the device of defendants' Exhibit 24 in all its features. We have several other patents, antedating these Ellis patents, which cover the Ellis lacer more broadly.

Of the applications listed on schedule A of the Rice and LaChapelle agreement, plaintiff's Exhibit 128, the first three applications cover the machine. The fourth application covers the seam made by the machine and the method of making that seam. These inventions involved the addition of an extra thread on that side of the chain stitch where there was but a single thread.

When we acquired the LaChapelle device he had made only one machine, which was experimental and far from being commercial. We have been working on it since we acquired it and have tried it out several times in a shoe factory, but it is not yet commercial. We are still at work with the purpose of developing it into a commercial machine.

As to the utility of this invention, in addition to strengthening the stitch it was believed that by this invention an economy could be effected by using a thinner and less expensive insole than could be used with the present commercial type of welting machine, which puts only one thread inside the channel.

The Carver Cotton Gin Company was engaged in the business of making cotton gins. Their business in the two or three shoe machines which I have described was a side business and not their principal business. They had got into it accidentally through having manufactured at one time or another machines on contract for parties who did not have shops of their own.

109 As to the Acme leveling machine, adapted for use on freak or sample shoes, every manufacturer has to manufacture samples to show to his jobbers. That is the way he sells his shoes. Its utility on sample shoes and on freak shoes is the peculiar advantage of the Acme leveler, which did not require any adjustment. After leveling a shoe of one kind, it could take a shoe of an absolutely different size and shape and operate upon it without any adjustment at all. The automatic leveler which the United Company then had was entirely automatic and consequently had to be adjusted for every size and shape. It was by far the best machine in existence for the regular work of a factory, but where every shoe that came to the machine was of a different size and shape it would take a great deal of time to effect the necessary adjustments between each shoe. Accordingly these two machines occupied quite different fields.

The United Company's Amazeen skiving machine was not adapted to do commercially the same kind of work as the Carver vamp skiver. The Amazeen machine is a light machine, adapted for doing light work. Defendants' Exhibit 28 is a sample of the kind of work that the Amazeen is designed to operate on. That is the vamp of vici kid, very light leather, for a lady's shoe, and the skiving operation is the beveling of the edge of that light, delicate leather. The Carver vamp skiver was a very much heavier machine, adapted and used for heavy leather. Defendants' Exhibit 29 is a sample of its work. It had to be very heavy in order to deal with this heavier stock, and it could not be used on light stock. The Amazeen machine could not be successfully used on heavy stock. It was too light to stand that work.

At that time the patents on the vamp skiver and the Acme leveler had expired. They were comparatively simple machines. The vamp skiver from the nature of its work did not require the delicate mechanisms which the Amazeen machines did.

110 The Carver Cotton Gin Company assigned to the United Company patent No. 619,921, February 21, 1899, covering a machine known as the "Adams top piece sanding machine," which was used to a very limited extent on the highest priced shoes for putting a finish on the top lift of the heel.

The principal property obtained from the Richardson Shoe Machinery Company was the inventions embodied in their improved McKay sewing machine and the patents on those inventions. That machine sewed the sole to the insole and upper of a McKay shoe. At that time the United Company was manufacturing a McKay sewing machine known as "Model B." We were marketing the Richardson machines in foreign countries exclusively, under an agency arrangement. All the machines that we put out abroad were purchased from the Richardson Company. We were not their agents in this country. Their machine was regarded, even by many of our experts, as a better machine than ours. European manufacturers demanded the Richardson machine and would not have our machine. In this country some were using our machine and some were using the Richardson machine.

After the Richardson machine was obtained the United Company immediately put several inventors to work with instructions to combine, each in his own way, the best features of the two machines. The experimenting was carried on very aggressively and an experimental machine was produced, which has been running for about a year in a shoe factory under constant supervision and now, after its weak parts have been strengthened

and the various changes have been made that have to be made during such a trial, this machine is about to be adopted. It is far superior to either the Richardson machine or our model B machine, and will be a commercial machine within a short time.

Referring to schedule D of plaintiff's Exhibit 125, comprising a list of the patents that were transferred to the United Company,

patents No. 710,612, No. 710,613, and No. 885,378 read

111 upon the Richardson sewing machine as it was put out.

A claim of one of these patents was believed to be infringed by our model B machine. That claim clearly covered a very important feature of the model B machine. We could not develop our machine without combining it with the Richardson machine, and the result of combining the patented inventions of both machines was to produce a better machine than either company alone could develop.

This McKay sewing machine was designed peculiarly for sewing the soles of McKay shoes, and there was absolutely no field for it on welt shoes. The stitching of a welt shoe is done while the shoe is on the last, while the last has to be removed from the shoe before the stitching of a McKay shoe. It is an indispensable feature of the McKay sewing machine that the horn must be inserted in the shoe, because the horn carries the thread, which comes from below up through the horn. A whirl in the tip of the horn carries the thread around the hook of the needle. It is accordingly impossible to attach a sole by a McKay sewing machine without removing the last, because part of the mechanism of the machine has to be inside the shoe during the sewing operation. That machine could not operate on a Goodyear shoe.

This is merely one illustration of the great variety of machines necessary for making the many different kinds of shoes. This distinction extends all the way through the bottoming room. For example, the wooden last stays in the Goodyear welt shoe throughout its manufacture and in all operations upon the bottom of a shoe where great pressure is exerted an entirely different mechanism is required, in view of the fact that the last is in the shoe and is easily breakable; whereas the McKay shoe goes through the factory without any last in it, and in such operations as leveling the sole and heel nailing an iron form is inserted inside the shoe which can receive any kind of pressure without any damage.

112 This explains in part the reason for the differentiation of the machines which are intended and adapted to operate on McKay shoes from those which operate upon Goodyear or other kinds, and vice versa. There are a great many machines which are adapted to operate and can operate only on a

particular type of shoe; and yet shoes of that type are manufactured in large quantities, so that manufacturers demand such machines and they are necessary to make a complete line of machinery for the trade.

John H. Richardson, a party to the agreement of plaintiff's Exhibit 126, was manager of the Richardson Shoe Machinery Company, and he came over to the employ of the United Company.

I have made an investigation to ascertain whether the Rochester lacer was acquired from Booth Brothers, and I find that the United Company never acquired that from any source.

The United Company had no machine for performing the operation performed by the Booth fudge-edge machine, which was used on light McKay shoes. Defendants' Exhibit 30, a light McKay shoe, illustrates the operation of that machine, which makes the ornamental imitation stitches on the upper surface of the sole edge, which look like milling, and simultaneously sets or burnishes the edge of the sole. This operation is done after all the bottoming operations have been performed. It is a finishing room operation and purely ornamental. These ornamental operations on shoes have increased very fast from year to year. They make the shoes very different looking articles and add to their selling qualities.

The Booth wheeling machine was used to define roughly the imitation stitch, preparatory to the stitch burnishing operation, and this machine, like the stitch burnishing machine, was used on Goodyear work. The only wheeling machine that the United Company had was adapted for use only on imitation welts; that is, McKay sewed shoes with a mock welt. There is a
113 type of shoe made which is McKay sewed with an imitation welt stitch around the edge to make people believe that they are welt shoes. Our wheeling machine was for use upon the McKay shoe and the Booth for use upon the Goodyear shoe.

An upper beading machine is used on uppers, the parts of which are sewed together wrong side out. The parts then have to be turned right side out and the seams beaten down. The machine comprises two appliances—one, tools for turning the parts right side out, and the other a hammer for beating down the seam, which is rounded when the parts are turned.

The Booth beading machines, the Columbia particularly, were better machines than ours. The machine which we had, the Ross-Moyer machine, was satisfactory on heavy work, but not for light or medium work, and for that work it has been displaced by the Booth machine.

The Booth stitch burnishing machine was used, after the operation of the wheeling machine, for the purpose of burnishing or giving a bright appearance to the imitation stitch on the upper face of the sole edge. It was used on welt shoes—never on McKays. The United Company had a machine by which it was trying to accomplish the same purpose by striking a blow upon the stitch through a wheel. We were putting this machine out but it was not successful. It was distinctly inferior to the Booth machine. After we got the Booth machine we used our machine for making the indentations first. Our machine was better for that work than the Booth wheeling machine, but it was very much inferior to the Booth stitch burnishing machine for putting the polish and final finish on the indentations.

The Booth upper shaping machine, for holding the uppers of cloth topped shoes while the cloth tops were cleaned, had been successful in its limited field and was sold through the United Company's general department after it was acquired. It was a simple contrivance, really a support for the shoe, and there is small demand for it. I think the patent had expired before the acquisition.

114 Referring to the patents enumerated in plaintiff's Exhibit 121, the Columbia beading machine was covered by patents No. 623,872 and No. 624,426; the wheeling machine by No. 826,352; the stitch burnishing machine by No. 845,939; the fudge edge machine by No. 852,703 and by application Serial No. 303,882.

The business carried on by the Booth copartnership was after this transaction carried on by a corporation in which the United Company acquired an interest. The trade was served better than before with the same machines, because there was added the selling facilities of the United Company and its service.

All the machines obtained from the Booths have been developed and furnished to its customers in large numbers by the United Company.

In the heel burnishing machine acquired from Zotique Beaudry there were three heel burnishing tools arranged in vertical alinement, one above the other, with space enough between each two adjacent tools to receive the heel of the shoe. The tools were of different characters to impart the different treatments successively required in burnishing a heel. The theory of the operation was that the workman would start with the shoe above the uppermost tool and would carry the shoe around each tool and between each adjacent pair of tools successively. The advantage was that during much of the operation two tools would be operating upon the heel at the same time.

85

At the time we acquired the invention we thought very highly of it, as evidenced by the price that we paid for it. We constructed several experimental machines, but we found quite soon that we were confronted by the serious difficulty that the operator would have to present the shoe at a number of different levels, and that the highest level was too high for his convenience and the lowest level too low. Operators are accustomed to
115 using a machine having but one tool, which is located at just the right height for the operator to handle the shoe and see what he is doing. There was only one tool properly located for the convenience of the operator in the Beaudry machine, or in any modification of it that we could devise. We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable.

The three applications for United States patents enumerated in plaintiff's Exhibit 120 all cover the heel burnishing machine acquired from Beaudry. Serial No. 191,247 covered the machine which I have described, and Serial Nos. 196,813 and 304,880 covered tools which Beaudry had on his machine. Those tools were new to us, as well as the machine.

The Smith lacing machine was an absolutely novel invention, nothing like it had been developed before, and its work had previously been done by hand.

Th four United States patents, Nos. 740,938, 767,844, 779,008, 795,073, the three applications, and the British patent, referred in plaintiff's Exhibits 117 and 118, covered many inventions, all of which were embodied in the experimental machine acquired from the Smith Company, and are now embodied in the commercial machine.

The Smith lacing machine was not really on a commercial basis when we acquired it. We have supplied the machine in very large numbers. We put out a tremendous number of them in a short time.

The parties interested in the Smith Lacing Machine Company and the Metallic Heel & Counter Company were the same. We had to buy them both in order to get either.

Of the patents and applications enumerated on the schedule of patents in plaintiff's Exhibit 119, patents No. 638,879 and No. 706,551 cover inventions embodied in the commercial form of the heel protector and counter, defendants' Exhibit 15. The other patent represented stages in the development of the same
116 invention, and the applications covered improvements not then adopted. We have a separate department at Beverly for manufacturing the metallic heel and counter, which is busy all

the time, and it is supplied to manufacturers in very considerable quantities.

From the Brockton Supply Company we acquired a patented machine for pulling lasting tacks. It was covered by the two patents recited in plaintiff's Exhibit 116—No. 777,795 and No. 795,631. That machine was commercial at the time we acquired it and to some extent in the hands of the trade. The United Company put it out to a considerable extent, but the most important use which we made of the inventions was to incorporate them in our experimental tack pulling and resetting machine, particularly the feature covered by claims of those patents which that machine had infringed. That machine was for use on Goodyear shoes and not only pulled the lasting tacks but drove the lighter tacks, called slivers, which hold the upper in place until after the welt has been sewed on. When the lasting tacks are pulled the upper has become pretty well shaped to the last, but it still needs some means to hold it in place, and the slivers which serve that purpose are made as light as possible to avoid breakage of the needle on the welter. Previously it had always been the practice to drive those slivers by hand. This new tack pulling and resetting machine of ours, in which we incorporated the inventions claimed in the patents acquired from the Brockton Supply Company, was the first machine in the art for performing the two operations at once.

We had been developing our machine before this acquisition, but it infringed claims of the patents owned by the Brockton Supply Company, and no machines had been put out. After the acquisition we combined their inventions and ours in our machine and furnished it to customers in large numbers.

The Leopold J. Courteau machine (mentioned in plaintiff's Exhibit 115) was intended for cementing linings to uppers. That is done to a very limited extent in some kinds of shoes. We had no machine for doing it and it had been done by hand. It was a simple operation.

117 Courteau's machine was only experimental and was covered by application Serial No. 320,611, filed June 7, 1906.

We were unable to make a practicable machine embodying the Courteau invention. We made a very determined effort to make it practicable. Our inventors who were working upon it had frequent conferences with Courteau, and finally, when they were convinced that it was utterly impracticable, they made a final appeal to Courteau to see whether he could make any suggestions which would remedy the situation, and he was unable to do so. The concern with which Courteau was connected,

which under the agreement was entitled to have machines at cost, considered the machines worthless and refused to take any machines. We did the best we could with it but could not develop anything out of it, and it was given up.

The Booth Brothers perforating machine was covered by patent No. 701,107, referred to in plaintiff's Exhibit 114. The United Company had at that time a machine known as a tip punch. That was a gang machine which punched the little holes in the tip of a shoe for ornamental purposes, making all the perforations at one operation. It was not, however, adapted to perforate a vamp, where the perforations covered a considerable piece of leather, were not on a straight line, and differed in contour with every size and shape. The Booth perforating machine was adapted for perforating a vamp, as shown in defendant's Exhibit 18, by a single tool which operated step by step.

These machines are sold by the United Company through its general department. The business in the Booth perforating machine was developed greatly after the United Company acquired it and it was supplied to customers in large numbers. The William B. Arnold cementing machine (referred to in plaintiff's Exhibit 113) was designed for the purpose of applying cement to the flesh side of a Gem insole, which comprises a leather
118 blank reinforced by a canvas strip. That canvas has to be cemented to the flesh side of the insole, and the Arnold machine was adapted for putting cement on the insole to which the canvas was then attached. This Arnold machine was covered by patent No. 728,793, which was assigned to the United Company. Arnold had built seven machines, which had been supplied to manufacturers.

This was a satisfactory machine, but it was displaced by a new type of reinforcing canvas which was introduced about this time by concerns other than the United Company. That canvas was sold to manufacturers with the cement already on it, and it was steamed and heated and then stuck right on the sole. There were three concerns engaged in preparing and selling this new type of reinforcing canvas and it entirely revolutionized the prior processes of making Gem insoles. This new process was subsequently used instead of the cementing machine and entirely superseded it, so that there was absolutely no demand for the Arnold machine immediately after we acquired it and ever since. Defendant's Exhibit 31 is a sample of the coated canvas for the Gem insole.

From Kimball & Hadley the United Company acquired (under plaintiff's Exhibit 112) awls and needles for use on

Goodyear machines. The Goodyear needle is curved and the awl for making the hole for the needle must also be curved. Both the awl and needle move in the arc of a circle and accordingly must be curved alike in that arc.

Prior to this purchase the United Company did not manufacture Goodyear needles or awls, but had to obtain them from outside sources in order to furnish them for use with its own Goodyear machines. The United Company had an awl for use with its metallic fastening machines, but that awl was long and straight, much larger and of an entirely different description. It had to form an opening to receive a nail, while the Goodyear awl forms an opening to receive thread and is much smaller than the metallic awl.

119 The awls and needles which the United Company acquired from Kimball & Hadley were furnished in quantities to customers of the United Company, users of Goodyear machines.

Zachary Taylor French had for many years been in the employ of the United Company and its predecessor, the Goodyear Company, before the agreement of plaintiff's Exhibit 111 was made. He was an inventor and had made alone or jointly with others a large number of inventions, and for some time prior to this agreement he had been superintendent of the Goodyear factory. That was before the Beverly plant was built.

It had been the practice of the Goodyear Company to make royalty agreements with him from time to time which provided for payments for his inventions by way of royalties. The agreement of plaintiff's Exhibit 111 was simply a settlement of those royalty agreements once and for all.

Referring to the agreement with the American Glue Company, plaintiff's Exhibit 110, sandpaper is used in the manufacture of shoes for the operations known as scouring and buffing. The general object of each operation is the same—to smooth up the particular part of the shoe on which the operation takes place.

Prior to this agreement the United Company was agent for the American Glue Company abroad, and it had bought from the American Glue Company the sandpaper which it furnished to customers in this country. This agreement did not change the trade relations of the parties in the least. After making the agreement the United Company continued to furnish the same sandpaper to customers as liberally as before.

As to the agreement with the F. G. Farnham Brush Manufacturing Company, plaintiff's Exhibit 109, the hubs, sleeves, and collars mentioned in that agreement are parts of the brush when

ready for operation on the machine; they hold it together. They
are necessary parts for any brush that is revolved by
120 machinery. Fillers are the material, canvas and card-
board, which more immediately holds the bristles in place.

Making brushes for use on cut-glass work was almost the entire business of the Farnham Company. They were doing a little business in making brushes adapted for use on shoes, but they were poorly located geographically for shoe business. They were in Honesdale, Pennsylvania.

After this transaction the cut-glass business was continued and is still being carried on by the S. A. Felton Company, to which the United Company turned it over. The shoe brushes manufactured by the Farnham Company were manufactured and furnished to the trade by the United Company in considerable quantities for a time. The Farnham brush was very superior to our old brush, the Felton brush, with which we had been having great difficulty because the bristles were constantly coming out. For several years we had been having complaints all the time that the bristles would not stay in the brush. In this respect the Farnham brush was much superior to our old brush, but it was more expensive, so that the demand for it has not been as great as it otherwise would have been.

After we acquired the Farnham brush we made use of the general idea of the Farnham brush and produced an improved brush of this same general type, with the addition of valuable improvements which completely overcame the difficulties which we had had before. Our invention was making the brush with retaining cords zigzagged between successive layers of bristles and cardboard in such a way as to lock the bristles in place. That construction afforded a complete solution of the difficulty which had been troubling us for several years. We were working on this brush at the time that we got the Farnham brush, but it
was not then commercial and we had, at that time, no
121 assurance that we should be able to develop it into any
practicable form.

Of the patents enumerated in schedule B of plaintiff's Exhibit 109, No 645,523 and No. 648,166 covered the Farnham brush. No. 673,119 covered the brush section and No. 677,502 covered the combined brush and hub. The patent on the improved brush which we developed is Graham patent No. 912,303, granted February 16, 1909.

The Graham brush, which is very satisfactory, is the one we are now principally putting out. That is shown defendants' Exhibit 32, which has been partly torn apart to show the construction.

Joseph W. Leary, a party to the agreement of plaintiff's Exhibit 108, never manufactured any machinery. He never made anything. He picked up second-hand machines and resold them in a very small way. He had no factory, but simply a small office. He dealt principally in cement, blackings, and stains which are used in the manufacture of shoes and are dealt in by hundreds of dealers. He was not making any, he was simply retailing. His whole business was insignificant.

Leary had also been one of the agents of the United Company for the Amazeen skiving machine. He was an extremely capable salesman and mechanic, thoroughly familiar with the Amazeen machine, and unusually successful in selling it. But being located in Lynn with his little business his activities with reference to the Amazeen machine were centered there, while after his employment by the company his field with that machine was greatly enlarged. He is still with the United Company and doing the same work, for which he is very well qualified by his expert knowledge.

Referring to the employment agreement with Fred H. Perry, plaintiff's Exhibit 107, Perry was given the opportunity at his own urgent request to enter the company's inventive department, and he succeeded very well in that work. At first his inventions were of comparatively little importance, but after a time
122 he made some very important inventions, including the present commercial rough rounding and channeling machine, which is a great advance over the machine which it superseded. He also invented the jointing machine, which performs an operation which was previously performed exclusively by hand, and was a remarkable instance of displacement of hand work by a machine operation because the hand work itself was inexpensive. But despite this fact the machine has been so extremely successful that it has effected a substantial saving in the cost of making the shoe.

Perry first entered the company's employ as a machinist in February, 1900, and was then paid thirty-four cents an hour. His salary has been raised five or six times and is now a substantial salary, many times what it was when he first began. I can state it if desired.

The benefits of Perry's inventions have been given to the trade, and many commercial machines embodying his inventions have been put out in very large numbers.

With regard to the cementing machine acquired from Joseph P. Curtis, in some classes of work it is desired to strengthen and stiffen the upper by cementing a thin piece of fabric to it in addition to the lining. This operation is sometimes called doubling. The Curtis machine was intended for applying a very thin coating of cement to the fabric to make it stick to the leather.

The Curtis machine was covered by a patent application Serial No. 174,913, filed September 8, 1903, on which a patent was granted on May 16, 1905, No. 789,718.

At the time of this transaction the United Company had nothing for doing this work, which required a machine of an entirely different type and entirely different organization from any we had. For example, the Arnold machine for cementing the Gem insole, which has to be particularly constructed for that
123 purpose, could not be used for the operation for which the Curtis machine was intended; nor could the Curtis machine be used to perform the operation of the Arnold machine. The two machines occupied entirely separate fields.

The Curtis machine did not prove commercially acceptable and was not a success. We did what we could to make it a commercial success. We put out some forty-five of them, but they were constantly giving trouble. The machine did not apply cement uniformly or at any place as it should. Also the lining, instead of going out of the machine as it should, frequently went up around the pressure roll and had to be pulled off. Most of the machines which we put out have come back.

At the time of this transaction Curtis had only one machine, an experimental machine.

J. K. Krieg & Company were located in New York, and for a great many years they had been agents for the Consolidated & McKay Company and the McKay Shoe Machinery Company. They had continued up to this time as agents for the United Company for all of its departments except the Goodyear. At the time we purchased the parts and supplies at their depot we also got a patented heel seat rounding machine and a heel scarfing machine.

The Krieg heel seat rounding machine was used for trimming around the heel ends of Goodyear soles, which are made with nearly square corners. It was particularly constructed for that work and was an excellen machine, much superior to the one we were putting out. Our machine was merely an edge trimming machine provided with a larger rotary cutter than was used for edge trimming, and in the use of our machine the stock trimmed off was all chewed up into dust.

The Krieg machine operated in an entirely different way and cut off the surplus stock by a reciprocating chopping knife, in such manner that the scrap of sole leather which was
124 removed could be utilized later. The pieces of sole leather removed by the Krieg machine could be used in pieced heels. In many kinds of shoes the lifts between the heel seat and the top lift are made up of pieces of scrap leather, and any

joints around the edges are covered by the wax used in the heel burnishing operation.

This Krieg machine enabled the shoe manufacturer to save the corners of the Goodyear sole and use them for such purposes as I have described. It is his aim to save every available scrap of leather, and if it has no other use it can always be sold by the pound as scrap leather. We had no machine of that kind before.

The Krieg heel seat rounding machine was covered by patent No. 560,829, dated May 26, 1896.

The Louis heel scarfing machine was designed for skiving off a thin layer of the stock on the grain side of a sole for the purpose of affording a cover for the curved breast of a Louis heel, used in women's shoes. Such heels are made of wood, covered on the sides and back with a thin piece of leather, and it is essential that there also be a leather covering for the curved breast. In the sole of defendants' Exhibit 15 the piece that is skived off comes down over the breast of the heel. This machine was adapted only for this particular kind of heel. The United Company had no machine of that kind, but put this machine on the market after it was acquired.

The embossing machines which came from Krieg were simple machines. I don't recall that they differed substantially from machines which we had. They were used for impressing ornamental configurations in the surface of upper stock or for stamping the facing on the upper edge of the inside of a shoe. When so used the name of the manufacturer or retailer is frequently impressed. This is a common practice.

125 These Krieg machines were continued by the United Company and furnished to customers.

W. B. Cross, prior to the acquisition of his business, was furnishing all the tacks for the lasting machines, which were being put out by the Consolidated & McKay Company and which the United Company continued to put out. Those tacks were made particularly for those machines. We were buying many tons every week, nearly his entire output. We simply acquired that business to be able to supply our lasting-machine customers with tacks.

The T. A. Norris Machine Company (plaintiff's Exhibit 102) dealt in second-hand machines just as Leary did, picking up from time to time various second-hand machines and selling them. Norris did not manufacture anything and was not in the business of supplying general lines of shoe machinery. Norris had a few simple machines made for him, but his main business was second-hand machines.

The tip punch which Norris had was improved upon by the United Company, developed into the present commercial machine, and has been supplied to customers.

The Norris welt-cutting machine simply cut leather into strips of the proper width for welting. We had no such machine, and we furnished the Norris machine to our customers.

At this time the United Company was not doing anything with McKay sewing machines in this country, but simply had some rights to sell McKay sewing machines abroad. After the Norris acquisition we furnished the Norris-McKay sewing machine to our customers.

As to the Norris fair stitch loop-cutting machine, in the manufacture of McKay sewed shoes it is customary, in order to make the shoe look as nearly as possible like Goodyear welt shoes, to sew a stitch through the tap and sole or through the mock welt and sole. In that day the fair stitch was a chain stitch, with the chain in a channel on the outside of the
126 sole. The bunch formed by the chain would show through the thin channel lip of the sole unless it was removed, and this Norris machine was intended for cutting the chain out of the channel. That, of course, spoiled the stitch, as far as holding power was concerned, but the holding power was not desired or needed. This operation was performed on that particular kind of shoe, and the United Company furnished this Norris machine to customers until that method of fair stitching went out of use. That was one of the styles of shoes that come in and go out and which require particular kinds of machines. When the style of shoe goes out the machine becomes obsolete.

The power spring heel scarfer acquired from George W. Emerson & Company (plaintiff's Exhibit 101) was a power machine, and the machine which we had before was a hand machine. The machine was used in the manufacture of spring heel shoes to bevel the front edge of the lift which went in above the sole, so that the sole could be bent over it without too sharp a break. That is the type of heel peculiar to children's shoes. That machine was covered by patent No. 653,016, dated July 3, 1900. This scarfer went into the general department and was furnished by the United Company to its customers.

The Emerson tip scourer was used to scour damaged portions on the tips of patent leather shoes. The enamel is often broken or destroyed during the lasting operation. It has to be scoured before the enamel is replaced, and this tip scouring machine performed that operation. It also had a special tool which could be put into the crease.

Before this the United Company had no tip scourer. The Emerson machine went into the general department and was furnished to customers in large numbers.

The Emerson heel burnishing machine and the Xpedite heel burnishing machine of the United Company performed
127 their operations in entirely different ways. Some manufacturers preferred one and some the other, and accordingly some would insist upon one type of machine and others upon the other type. We furnished both types, according to the manufacturer's preference. They were both handled by the United-Xpedite Company.

William R. Sampson was one of the partners in this firm. He entered the employ of the United Company and is still with it in a very important position. He entered the general department, was several years ago made the head of the general department, and recently, while nominally retaining that position, he has been promoted to the executive offices.

George A. Smith (plaintiff's Exhibit 100) was another agent for the United Company, whose headquarters were in Philadelphia.

The acquisition of the business of parties who had been agents was in connection with the extension of the United Company's service to shoe manufacturers. Since these acquisitions the United Company has maintained branch offices where a large number of skilled men are constantly awaiting call from shoe manufacturers to repair immediately any breakage or to adjust a machine in case it is not right. In these offices we keep supplies and a complete line of all parts whichever break. These offices had previously been conducted in a way by people like Smith and Krieg and Ross-Moyer, as agents. We bought their businesses and still kept them. We used their places of business as depots where we kept supplies and parts, and also used them as the headquarters of our repair force. We continued to furnish the same parts and additional parts to our customers, and very much better service.

The spring heel scarfing machine which we got from Smith was a simple machine, in which the knife was operated by hand, for beveling the lift in a spring heel shoe. It was covered by patent No. 458,535, dated August 25, 1891. There is less demand for this machine than for the power machine, owing to the fact that it is hand operated, but there is still a field
128 for it and it is being sold to customers through the general department.

The W. J. Young heel compressing machine was being put out by the United Company abroad. We were agents for him and

had been for several years, and we had not shipped a heel compressing machine of our own to either England or Germany for over ten years. Young's machine was manufactured in Lynn and he had no facilities for putting out his machine abroad.

If Young's machine had not been manufactured in Germany very soon after the date of the Young agreement, his German patent would have been open to attack under the German law as it then stood. To preserve his rights it was necessary immediately to begin to manufacture there commercially. We therefore acquired the German patent and began to manufacture in Germany and marketed the machines there.

The United Company had nothing to do with the marketing of the Young machine in this country. His company, the W. J. Young Machinery Company, continued to put the machine out in this country, has put it out ever since, and is still putting it out. He has been in competition with us before and since the agreement. We acquired nothing except the German rights. We had not been putting out any heel compressor of our own abroad.

The German patent on the Young machine was No. 133,038, July 5, 1899, and the British patent was No. 12,918, June 21, 1899.

The machine which we had before this was an old machine, very much inferior to Young's, which was of comparatively recent invention. He preceded us by two or three years in inventing a modern, satisfactory, high-speed heel compressing machine.

The American sole laying machine company (plaintiff's Exhibit 98) had a double sole laying machine. That machine had right and left forms and operated on a pair of shoes, rights and
129 and lefts, at one time, one being under pressure while the operator was putting the other in position to go into the machine. That made the machine infringe the famous Cutcheon patent. That patent had been sustained by the Court of Appeals and many manufacturers had been forced to pay heavy damages for infringing it. The American Company had a license under the Cutcheon patent.

Before this acquisition the United Company had no double sole laying machine; we could not make one on account of the Cutcheon patent. We were putting out a single sole layer, the machine which we got from the Boot & Shoe Sole Laying Company. That company had no license and could not make a double machine. The American Company also had patents relating to the pad used on their machine which stood in the way of our adopting a satisfactory pad.

The most important thing that we got from the American Company was the license under the Cutcheon patent. That is what enabled us to make a two-form machine after we acquired that license. Without that we would not have been able to adopt this double form.

After this acquisition we incorporated in the machine which we got from the Boot & Shoe Sole Laying Company, the inventions acquired from the American Company, particularly the two-form construction and the pad invention. In other words, we got the method of sole laying from the Boot & Shoe Sole Laying Company, and we got the double application of that method from the American Company.

By combining the inventions embodied in two machines we made a better machine than either. The new machine has right and left forms and operates twice as fast as the single machine which we had previously been putting out. The commercial name of the new machine is Goodyear improved twin-sole laying machine, and it has been placed with our customers in very large numbers.

130 The American machine embodied inventions covered by patents No. 376,408, January 10, 1888; No. 393,216, November 20, 1888; No. 436,034, September 9, 1890, under which the American Company had a license; No. 536,532, March 26, 1895; and the Cutcheon patent No. 384,893, June 19, 1888, under which the American Company had a license from the Tripp Giant Leveler Company.

The Marlboro Awl & Needle Company needles (plaintiff's Exhibit 96) differed from those which we acquired from Kimball & Hadley; The Marlboro Company needles were straight McKay needles adapted for use in the McKay sewing machine, which requires a straight needle. Goodyear needles are curved. Prior to this acquisition we purchased from others, including the Marlboro Awl & Needle Company, the needles which we supplied for our McKay machines.

The chief awl business of the Marlboro Company was in hand awls, such as cobblers use for shoe repairing.

The mallet which we got from the Marlboro Company had a head made of rawhide. These mallets were used by shoemakers and cobblers. These awls, needles, and mallets acquired from the Marlboro Company have been furnished by the United Company to its customers through the general department.

The treeing machines acquired from O. A. Miller (plaintiff's Exhibit 93–95) are used in all factories in cleaning up and blacking the shoes and making them presentable prior to packing them in cartons for shipment. A tree foot is the part of a treeing

machine that enters the shoe to spread it and hold it with the upper taut during the polishing and rubbing operations.

This was absolutely a new branch for the United Company. It had nothing of the sort before.

There were six patents covering the Miller treeing machine and its parts: No. 442,034, December 2, 1890; No. 319,354, June 2, 1885; No. 319,355, June 2, 1885; No. 319,356, June 2, 1885; No. 441,115, November 18, 1890; No. 441,116, November 18, 1890.

131 The United Company acquired different kinds of eyelets from the Morley Button Manufacturing Company, J. C. Rhodes & Company, the Boston Fast Color Eyelet Company, and the Enamel Eyelet Company. The last two came from Theophilus King and his associates.

All these eyelets were patented. The Morley patent was No. 691,850, dated January 28, 1902; the Rhodes patent was No. 565,091, dated August 4, 1896; the Enamel Company eyelet was covered by patent No. 639,997, dated December 26, 1899, and design No. 24,867, dated November 12, 1895. The Fast Color eyelet was covered by patent No. 557,992, dated April 7, 1896; the dies for making fast-color eyelets were covered by application Serial No. 120,856, filed August 23, 1902, a renewal of an application filed February 9, 1895; and the method of covering the eyelets was covered by an application filed April 17, 1905, Serial No. 255,900, a renewal of an application filed February 9, 1895. The Boston Company also had a registered trademark "Fast Color."

The essential differences in the character and uses of the different eyelets acquired were as follows:

The flange of the metal barrel of the Fast Color eyelet served the sole purpose of anchoring a thick covering of celluloid which took the wear so that the metal never became exposed in the wear of the shoe.

The Rhodes enamel eyelet had a metal flange formed with the shape desired for the flange of the finished eyelet instead of merely serving as an anchor for celluloid, as in the Fast Color eyelet. The entire eyelet was coated with enamel, which frequently wore off in the wear of the shoe so that the metal became exposed. For that reason it was used on cheaper shoes than the Fast Color eyelet. The patented feature of the Rhodes eyelet was the inturned portion of the flange which supported it against the thrust of the eyelet-setting tool. Otherwise the flange would bend in the setting operation and the enamel would crack. That feature has never been dispensed with in any enamel eyelet which was commercially satisfactory.

132 The Enamel Company eyelet likewise had the supporting inturned edge for the flange, embodying the Rhodes invention.

The Morley eyelet also had the inturned supporting flange. In this eyelet the enamel did not go down inside the barrel; that was the feature covered by the Morley patent. This was different from both the Rhodes and Enamel Company eyelets. It was claimed that it was objectionable to have the enamel inside the barrel. They made the eyelet by a secret process and by a secret formula.

All the companies making enamel eyelets were in litigation with each other.

The Boston Fast Color eyelet and the Enamel eyelet came from the same people, and although they knew well how to make Fast Color eyelets they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had had to junk a large supply we had on hand which we couldn't get rid of.

The Fast Color eyelets were used entirely by manufacturers making the more expensive grades of shoes. The various enamel eyelets were used on cheaper shoes. The Enamel Company's eyelet and the Morley Company's eyelet were not as good as the Rhodes, and were adapted only to the cheapest grades of shoes. The Rhodes eyelet could be used on better grades.

The United Company has continued to manufacture and supply the Fast Color eyelets and the Rhodes eyelets, and also the Enamel Company and Morley eyelets so far as there was demand. The demand for the Enamel Company and Morley eyelets has been so slight that it has been supplied from stock on hand; if manufacturers would buy them, we should be glad to sell them.

Since the time of these transactions the Fast Color eyelet has been improved in ways that made it possible to reduce its price, and the enamel eyelet has been much improved since then, so that as a result of development since that time the fields overlap somewhat.

133 In the case of both the Fast Color and the Rhodes eyelets many new sizes have been made which were not made in 1901. Both kinds have been very much improved from time to time.

The Boot & Shoe Sole Laying Company (plaintiff's Exhibit 90) had no factory, were doing a very small business. They had only the sole-laying machine which I have previously described. Two of their patents were No. 362,447, dated May 3, 1887, and No. 375,549, dated December 27, 1887. There were other patents which I will supply later.

The machines of the Globe Sewing Machine Company were for sewing the welt on a welt shoe and attaching the outsole to the welt. That company was being sued under the Briggs method patent, a Goodyear patent.

The patent on the Globe experimental rounder and channeler was No. 602,211, dated April 12, 1898. As to their welter and stitcher, they were attempting to use the same machine for sewing the welt to the upper and insole and for stitching the outsole to the welt. They had a lockstitch machine for both operations, and used some attachments for one operation and other attachments for the other. The patents on the machine used for the two purposes were No. 409,161, dated Aug. 20, 1889; No. 421,541, dated Feb. 18, 1890; No. 421,808, dated Feb. 18, 1890; No. 432,010, dated July 15, 1890; No. 432,011, dated July 15, 1890; No. 432,012, dated July 15, 1890; No. 444,419, dated Jan. 13, 1891; No. 445,655, dated Feb. 3, 1891; No. 445,656, dated Feb. 3, 1891; No. 445,657, date Feb. 3, 1891; No. 452,159, dated May 12, 1891; No. 502,873, dated Aug. 8, 1893; No. 502,874, dated Aug. 8, 1893; No. 502,875, dated Aug. 8, 1893; No. 530,297, dated Dec. 4, 1894; No. 545,669, dated Sept. 3, 1895.

The Star leveling machine of the Swain Fuller Manufacturing Company was protected by patents No. 435,882, dated September 2, 1890, and No. 435,883, dated September 2, 1890. I think that company had a small machine shop.

134 The inventions covered by the patents of the Boot & Shoe Sole Laying Company, the Globe Sewing Machine Company, and the Swain Fuller Manufacturing Company, were used by the United Company so far as they were commercially feasible.

I was asked by counsel for petitioner to produce a list of machines acquired from the Ross-Moyer Manufacturing Company (plaintiff's Exhibit 87). There were nineteen of these machines as follows: Rolling machine, buffing machine, heel-scouring machine, bottom-stamping machine, embossing machine, edge-setting machine, button-fly scalloping machine, Ross cement pot, shank-burnishing machine, heel-breasting machine, heel-seat beading machine, leather-scrap splitting machine, stamping machine, insole flexing machine, beading and turning machine, heel-building machine, two speed upper-cleaning machine, sole-gauging machine, and vamp-polishing machine.

These machines were the foundation for our General Department and were all put into that department and furnished to our customers. All are now available to customers. The shank

burnishing machine and the leather scrap splitting machine are now obsolete, but can be had if a manufacturer wants them.

The Ross-Moyer Company had been agents in Cincinnati and Chicago for all the constituant companies of the United Company, except the Goodyear, acting as agents in that territory in the furnishing of machines, supplying parts for the machines and furnishing metallic material for the metallic machines.

When the United Company extended the plan of furnishing service the Ross-Moyer Company plant was made one of the company's depots, where parts, metallic material, and skilled workmen could be obtained at any time.

Before this acquisition the United Company had no machines for doing the kind of work done by eighteen of the nineteen Ross-Moyer machines. It had a machine for doing the same work as the heel seat beading machine.

135 The patents on the Ross-Moyer machines were as follows: Buffing machine, No. 426,862, April 29, 1890; No. 431,997, July 8, 1890; heel-scouring machine, No. 613,079, October 25, 1898; bottom-stamping machine, No. 437,664, September 30, 1890; embossing machine, No. 441,980, December 2, 1890; edge-setting machine, No. 368,853, August 23, 1887; Ross cement pot, No. 616,016, December 13, 1898; shank-burnishing machine, No. 368,853, August 23, 1887; heel-breasting machine, No. 437,665, September 30, 1890; heel-seat beading machine, No. 408,537, August 6, 1889; beading and turning machines No. 432,902, July 22, 1890; No. 606,301, June 28, 1898; No. 680,624, August 13, 1901; heel-building machine, No. 569,938, October 20, 1896; hub for polishing wheel No. 680,418, August 13, 1901. The hub for polishing wheel was used on two or three machines, particularly the buffing machine.

The welter, stitcher, and rough rounder of the Bay State International Shoe Machinery Company (plaintiff's Exhibit 86) were very different in construction from the machines of the United Company. That company had put out no machines in this country.

The channeling machine put out by the Stanley Manufacturing Company was used for and adapted for use only in channeling the soles of McKay shoes. The United Company had two channeling machines, one for channeling Goodyear insoles and the other a combined rough rounder and channeler for trimming the edge of the outsole of a Goodyear shoe and at the same time forming a channel to receive the stitch. Neither was at all of the same type as the Stanley channeling machine. Neither could be used commercially on the McKay shoe; nor could the Stanley channeler be used commercially on the Goodyear shoe

Each machine had an appropriate field in which it was essential and the work which the machines had to do was utterly different.

From Winkley and Phillips (by plaintiff's Exhibit 77) we acquired patented inventions relating to a leveling
136 machine, which were afterwards developed into the Atlas leveler. A leveling machine is used to impart the desired shape to the sole of a shoe. I have spoken of the Star and Acme levelers, each of which had its particular use. The Atlas machine was used for leveling McKay shoes. It was a direct pressure machine and had an iron form over which the shoe was placed for the leveling operation. Great pressure was exerted upon the shoe through a mold which had the shape desired for the sole of the finished shoe.

The Atlas machine was peculiarly adapted for use on McKay shoes. At the time that the McKay shoe comes to this operation there is no last in it, because the last had to be taken out to permit the operation of the McKay sewing machine, as I have previously explained, and the Atlas machine had an iron form to go into the shoe.

The Goodyear shoe when it comes to this operation has the last still in it, so that there must be an entirely different mechanism for supporting the shoe. In all operations on Goodyear shoes requiring the application of pressure there must be a support for the last, which usually comprises a support for the toe and a device having a pin to enter the hole in the cone of the last. Also the pressure applied must in all cases be so determined that there will be no danger of breaking the wooden last. These requirements extend through many operations, including the heeling operation. The last is still in a Goodyear shoe when it is heeled. It would be utterly impossible to use the McKay heeling machine for Goodyear work, as it would break the last. We have for many years, up to within a year and a half or so, supplied entirely different heeling machines for McKay and Goodyear shoes.

The patent on the Winkley and Phillips machine, which was the subject of the agreement, was No. 627,034, June 13, 1899, and I think there were others.

Mr. Winkley was an inventor and had made many valuable inventions, and Mr. Phillips, who is a patent lawyer and a patent solicitor, had done the patent soliciting for Mr. Winkley, and had occasionally been a joint inventor with him. Winkley and Phillips had previously been joint inventors of the
137 Goodyear automatic leveling machine. They were in close relation with the United Company.

The Lincoln Sewing Machine Company agreement (plaintiff's Exhibit 80) was simply an agreement adjusting a royalty ar-

rangement which had been made by the old Goodyear Company. There were patents involved there, but I haven't a list of them here.

I understand that the Seaver Process Lasting Machine Company (plaintiff's Exhibit 75) had no factory. The patents on their lasting machine were No. 570,220, October 27, 1896; No. 590,639, September 28, 1897; No. 635,129, October 17, 1899.

The patents on their experimental pulling-over machine were No. 596,308 and No. 596,325, both dated December 28, 1897; and No. 635,124, October 17, 1899.

The Globe Shoe Tool Company had no patents.

The patent on Albert G. Brewer's improvement on the heel-breasting machine (plaintiff's Exhibit 70) was No. 645,994, March 27, 1900.

The patents on the slugging machine acquired from Edwin T. Freeman (plaintiff's Exhibit 68) were No. 615,481, December 6, 1898; No. 618,082, January 24, 1899, reissued as No. 11,962, January 2, 1902; No. 714,572, November 25, 1902.

The Boston Shoe Tool Company (plaintiff's Exhibit 67) had a patent on a cutter, No. 452,540, and on an expansible shaft for holding the cutters, No. 528,467, October 30, 1894.

Both Coupal and Gordon (plaintiff's Exhibits 64–66) had worked for the Goodyear Company before the United Company was formed and were both very skilled mechanics, particularly with reference to Goodyear machines. Their shop was a general machine shop, not particularly relating to shoe machinery.

Both Coupal and Gordon were employed by the United Company, and Gordon remained with the company until his death, about a year ago.

The patents of the Breach Manufacturing Company (plaintiff's Exhibit 63), under which the United Company acquired an exclusive license for a machine for cutting out soles, were No. 318,539, May 26, 1885; No. 318,540, May 26, 1885; No. 589,409, September 7, 1897.

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The patents owned by the Goddu Sons Metal Fastening Company (plaintiff's Exhibit 60) were No. 583,044, covering their loose nailer; No. 583,045, on their rapid screw machine; No. 583,046, on their slugger; No. 592,729, on the machine for making string nail wire for their string nail tacker; No. 599,933, on the string nail wire, and No. 616,918, on the machine for making that nail. They also had some patents on inventions not embodied in their machines.

Ten patents were acquired by the United Company from the Goddus individually, of which those that were infringed by the machines of the Goddu Sons Metal Fastening Company were as

follows: No. 584,735, June 15, 1897, covered its tacking machine; No. 614,130, Nov. 22, 1898, covered its loose nailer and also its slugger; No. 641,099, Jan. 9, 1900, was a broad patent on the string nail wire intended for use in the tacking machine; No. 655,223, Aug. 7, 1900, covered the machine for making the screw threaded wire intended for that company's rapid screw machine.

The Goddus, both father and sons, had been employed by the McKay Shoe Machinery Company before the United Company was formed, and the father had invented many of the metallic fastening and heeling machines which that company manufactured. Before the United Company was formed all the sons had left the employ of the McKay Company.

There was pending litigation between the McKay Company and the Goddus, father and sons, and the Goddu Sons Company before the United Company was formed. The McKay Company claimed that all the Goddu Company machines infringed its patents. It also claimed that the inventions in the Goddu machines were really the inventions of the elder Goddu and belonged to the McKay Company, and did not belong to the persons in whose names they had been taken out. Those claims had been evidenced by a suit brought in the Circuit
139 Court which had been very vigorously contested and was pending at the time of the purchase. By this acquisition all that litigation was eliminated.

None of the machines which I have just referred to, which were covered by the patents which I have named, has developed into a commercial machine. So far as I know none of them was ever put into a shoe factory.

Direct examination resumed:

The capital stock of the Seaver Process Lasting Company was $600,000.

The Globe Sewing Machine Company were putting out the same machine for both welting and stitching, which was equipped with certain appliances and attachments when used for welting and certain other appliances and attachments when used for stitching. They also had an experimental rough rounder.

The capital stock of the T. A. Norris Machine Company was $20,000.

The Rochester lacer was put out to some extent prior to 1899 by Booth Brothers. The patentee, Stillman A. West, had a misunderstanding with Booth Brothers early in 1899 and gave an exclusive license to the Boston Machine Works, which has been putting the machine out under that license since April,

1899. The Booths had nothing to do with it after that time. The United Company never acquired that machine.

Cross-examination resumed:

Approximately $38,000 was paid for the Seaver Process Lasting Company. Its $600,000 of capital stock was merely its nominal capital stock and I do not know whether it had been issued or not.

140 Direct examination resumed:

Eighty-five cents per share in cash was paid for the Corrugated Wire Fastening Company. The nominal capital stock was $375,000. My memorandum does not show how many shares the United Company acquired.

141 MAY 29, 1913.

CHARLES H. JONES, witness for the United States.

My name is Charles H. Jones. I live in Weston. I am president of the Commonwealth Shoe and Leather Company, shoe manufacturers. The company has been engaged in business since 1884. It has factories at Whitman, Massachusetts, and Gardner and Skowhegan, Maine. The total daily capacity of our several factories is between six and seven thousand pairs. We make high-grade men's welt shoes. We make also a very few pegged boots and standard screw shoes. We formerly made McKay sewed shoes, but they have been gradually discontinued, because the grade of goods we make is too high to admit of the exclusive manufacture of McKay sewed, which are cheaper goods and require the employment of cheaper labor.

I am familiar with the machinery used in the manufacture of shoes. I remember that the United Company was formed in February, 1899. From 1880 to 1900 I was constantly handling and dealing with shoe machinery as used in our business. I was entirely familiar with the operations and uses of the machines which were used during that period. During that time I selected and installed the first shoe machinery that was used on our class of goods.

Q. What has been your experience in connection with lasting machines used in the manufacture of shoes?

A. We have used various forms since about 1881; I believe we put in the first lasting machines. We have used various forms of lasting machines in our factory since that time.

Q. Are you familiar with the operations of those machines?

A. To some extent.

Q. You have used them in your factory continuously?

A. Yes, sir.

Cross-examination as to qualifications:

We had originally a McKay and Copeland lasting machine, and subsequently put in the machines called the Chase. During that time we made trials of other machines. I negotiated with the company producing the McKay and Copeland machine personally, and have full knowledge of the matter of leas-
142 ing lasting machines. The obtaining of the McKay-Copeland was the only instance in which I personally negotiated the transaction. I don't think I negotiated for the Chase machine personally. All the other lasting machines that we acquired subsequently to the McKay and Copeland were obtained under my direction either by Mr. Reed or the superintendent in charge of that department. The superintendent reported to me that such a machine was desired. We then consulted with regard to the application for the machine, and after the consultation decided what machine we would take. The application was then made by him. Those two instances are the only personal experience I can recall.

Direct examination resumed:

The first lasting machine company that I remember was the McKay-Thompson. That was later consolidated, about 1880, as I recall it, with the McKay-Copeland. Later the two in combination after some litigation acquired the Chase. The following companies were engaged in putting out lasting machines prior to 1899: The McKay-Thompson, McKay-Copeland, the Chase Lasting Machine Company, the Copeland Rapid Lasting Machine Company, the Consolidated Hand Method Lasting Machine Company, the Boston Lasting Machine Company, the Continental Lasting Machine Company, the Seaver Process Company, the Sinning Company, and some other small ones. I am testifying from my personal knowledge, and that which I acquired during the course of trade. In the course of my trade I knew of the existence of every one of these companies. I did not have dealings with all of these companies, except in the way of offer of sale and consideration of their product and declining it.

Q. Prior to February, 1899, so far as you know, had the Copeland Rapid Lasting Machine Company gone out of business?

A. No, sir; it had not. I might qualify that. It was in the control——

PUTNAM, J. You have answered the question.

Q. Prior to February, 1899——

PUTNAM, J. When you ask him whether he knows, you must find out whether he does know before you put a further question.

Mr. GREGG. I thought he had answered that.

PUTNAM, J. Well, he did. He didn't the first time. You should be careful about that, so that it brings out his personal knowledge. Proceed, Mr. Gregg.

Q. Now, prior to February, 1899, do you know whether or not the Continental Lasting Machine Company was engaged in business?

A. I couldn't answer that of my personal knowledge.

Q. Prior to February, 1899, do you know whether or not the Seaver Process Lasting Machine Company was engaged in business?

A. Prior to 1899?

Mr. CHOATE. You mean just prior, or when do you mean?

Mr. GREGG. Just prior to February, 1899.

143 MR. CHOATE. Why don't you say in January, 1899?

A. I couldn't answer that of my own knowledge.

Q. Prior to February, 1899, do you know whether or not the Sinning Lasting Machine Company was engaged in business?

A. Out of my own knowledge, no, sir.

Q. Now, immediately prior to February, 1899, what companies were engaged in putting out lasting machines used in the manufacture of shoes?

A. The Copeland Rapid.

Mr. CHOATE. Is that the name of the company or the name of the machine?

The WITNESS. No; that is the name of the machine. It was handled by the Goodyear Shoe Machinery Company.

Q. Give the name of the company.

A. The Goodyear Shoe Machinery Company and the McKay & Consolidated Lasting Machine Company. I don't pretend to get the names with perfect exactness, but that is as near as——

Mr. CHOATE. If I may correct you, it is the Consolidated & McKay Hand Method Lasting Machine Company.

The WITNESS. Yes, sir; that is the one.

Q. Now, what are the different names of lasting machines produced by the Goodyear Company just prior to February, 1899?

A. The names of the different machines?

Q. Yes.

A. They were called the Copeland Rapid and the Ideal, as I recall them. Those are the two names that I remember.

Q. Two machines?

A. Yes, sir; two modifications of the same machine, I believe, or slight changes in the basic machines.

Q. But were they two separate machines?

A. I think the Ideal was slightly different from the——

Mr. CHOATE. Just a moment. "I think" and "I believe" I submit isn't competent testimony on this subject. If he knows, he knows. If he doesn't, he oughtn't to think.

PUTNAM, J. What is that?

Mr. CHOATE. I say the witness is answering "I think" and "I believe" with reference to questions of fact. I submit those answers ought not to be accepted. If he knows, I say he knows. If he doesn't, he ought not to express his belief or his opinion.

Mr. GREGG. I submit that he can testify as to his best recollection about it.

PUTNAM, J. If you have no objection to the question as put, proceed, Mr. Gregg. Bear in mind that he must answer of his personal knowledge.

Q. What is your best recollection as to those two machines, the Ideal and the Copeland Rapid lasting machines?

A. There were slight differences between them, but in general respects identical.

Q. Were they to be used for the same grade of work, or substantially so?

A. I think——

Mr. CHOATE. Now, one moment. Don't think, please.

PUTNAM, J. Your own knowledge.

A. They were adaptations for slightly different classes of work; adaptations of the same machine for slightly different classes of work.

Q. What were those classes of work?

A. My best recollection in regard to that is that the Copeland Rapid was used for men's and the Ideal for women's.

Q. Well, could either machine do the work of the other; that is, could one machine be used for both men's and women's shoes?

144 A. I wouldn't answer that at this moment from my knowledge. My recollection isn't clear enough.

Q. Now, prior to February, 1899, what concerns were engaged in manufacturing and putting out, either on sale or lease, machines known to the trade as welt sewing and out-sole stitching machines?

Mr. CHOATE. I would like my same objection noted, if the court please.

PUTNAM, J. Ask him whether he knows of his personal knowledge.

A. The Goodyear Shoe Machinery Company and the Eppler Welt Company, a combination of the Campbell and Lincoln machines.

Q. What do you mean by a combination of the Campbell and Lincoln machines?

A. The Lincoln machine was a machine for sewing welts and the Campbell machine was a machine for stitching the outer sole. In combination they were putting out a complete set, a welting and stitching machine.

Q. That is, two different companies, or one company putting out the two machines?

A. I think the one company was putting out the two machines, but the machines were called by the names I referred to.

Q. And what company was it?

A. The Campbell.

Q. The Campbell Machine Company?

A. The Campbell Machine Company.

Q. Then there were three companies, the Goodyear and the Eppler and the Campbell?

A. Yes, sir. And there was another one; that is, there was a Globe machine that was sewing welts at that time, sewing turned shoes especially.

Mr. CHOATE. I ask that that answer be stricken out as not responsive to the question.

PUTNAM, J. What do you object to, Mr. Choate?

Mr. CHOATE. I object to the last answer.

BROWN, J. Do you object to the whole answer, or only that part that relates to another machine?

Mr. CHOATE. The last thing that he said about the Globe sewing machine.

BROWN, J. It seems to me that is objectionable.

PUTNAM, J. Wasn't that responsive to that?

Q. You just mentioned the Globe sewing machine?

A. Yes.

Q. What concern was manufacturing the Globe sewing machine?

A. I can't tell you from my own knowledge. I don't remember.

Mr. CHOATE. Then I ask that that statement about the Globe sewing machine to be stricken out.

PUTNAM, J. Yes. What he said about the Globe is stricken out.

Mr. GREGG. He just stated he knew the machine was in use, but he didn't know who manufactured it.

BROWN, J. The question called for companies, existing companies.

Q. Do you know whether or not the Globe sewing machine at that time was being used in shoe factories?

A. It was; yes, sir.

Q. Now, the welt sewing machine and the out-sole stitching machine are two different machines, are they not?

A. Yes, sir; distinct machines.

Q. Now, you stated that the Goodyear Company manufactured a welt sewing machine?

145 A. Yes, sir.

Q. And that the Eppler manufactured a welt sewing machine?

A. Yes, sir.

Q. And that the Campbell put out a welt sewing machine?

A. Yes, sir; the Lincoln.

Q. Now, could any one of those welt sewing machines put out by those three companies be used on the same grade of work?

A. Yes, sir.

Mr. CHOATE. One moment. I pray your honor's judgment. The witness hasn't shown any experience with any of them.

PUTNAM, J. The objection is overruled. Your exception is saved.

Q. Now, answer the question.

A. Yes, sir.

Q. All three of them were used for the same grade of work?

A. Yes.

Mr. CHOATE. How does the court leave that question, that it may be answered?

PUTNAM, J. The answer is all right.

Q. Now, the Goodyear Company put out an out-sole stitching machine, you say?

A. Yes, sir.

PUTNAM, J. You can use a hoe and a spade on the same grade of work that the finest and best machinery of the Harvester Company is used on, but it isn't doing the same grade of work.

Q. Were those three machines doing the same grade of work?

Mr. CHOATE. I pray your honor's judgment.

BROWN, J. Put it what they were doing. Wouldn't that be the better way?

PUTNAM, J. That is too leading a question. That would cover the whole case, perhaps.

Q. For what purpose was the welt sewing machine put out by the Goodyear Company used? What work did it accomplish?

A. It was used for the sewing together of the welt, the upper and the insole of a welted shoe.

Mr. CHOATE. You used Goodyear machines?

The WITNESS. Yes, sir.

Q. For what purpose was the welt sewing machine put out by the Eppler Company used?

A. The same purpose.

Mr. CHOATE. Just a moment, please. I supposed, your honor, he was to ask him whether he knew that of his personal knowledge.

PUTNAM, J. Well, Mr. Jones understands that he is testifying on this branch of the testimony only what he knows of his own personal knowledge.

The WITNESS. Yes, sir; I understand that.

Q. For what purpose was the welt sewing machine put out by the Campbell Company used?

A. I couldn't testify as to that of my personal knowledge. I never saw it work.

Q. Now, for what purpose was the out-sole stitching machine put out by the Goodyear Company used?

A. For attaching the outer sole to the welt.

146 Q. You know that of your own knowledge?

A. Yes, sir.

Q. For what purpose was the stitching machine put out by the Eppler Welt Machine Company used?

A. For the same purpose.

Q. Do you know that of your knowledge?

A. Yes, sir.

Q. For what purpose was the stitching machine put out by the Campbell Company used?

A. For the same purpose.

Q. Do you know that of your own knowledge?

A. I do.

Q. And did you have any Globe sewing machines in use in your factory?

A. No, sir.

Q. Now, prior to February, 1899, what concerns were engaged in manufacturing and putting out heeling machines; what was known to the trade as heeling machines?

Mr. CHOATE. Is that prior to February, or any time prior?

Mr. GREGG. I mean for a few years prior to February, 1899.

A. McKay & Bigelow Heeling Machine Association, the American heeling machine and the National heeling machine.

Q. The McKay & Bigelow?

A. The American and the National.

Q. Were those three concerns engaged in putting out heeling machines immediately prior to February, 1899?

A. I don't think immediately prior, sir. I think it was some years previous.

Q. How far back; how many years previous to February, 1899?

A. I an quite unable to give the date, sir. I have no recollection, and I have no means of fixing just the dates when the different companies disappeared.

The only company which was putting out a heeling machine just before February, 1899, was the McKay and Bigelow Heeling Machine Association.

Mr. CHOATE. We admit that the McKay Shoe Machinery Company was putting out shoe machines. Let us not waste any time about the name. That is the only one.

The WITNESS. The American and the National companies had not been in business for two or three years prior to that time, as I recall it. I am unable to give the date. I have no recollection and no means of fixing just the date when the different companies disappeared. For several years immediately
147 before 1899, metallic fastening machines had been put out by the American Metallic Fastening Company, the Wire Grip Fastening Association, the Simplex Slugging Machine Company, the Corrugated Wire Fastening Machine Company, and the Staple Fastening Machine Company. Just prior to February 7, 1899, I do not remember that any company was putting out metallic fastening machines except the McKay Shoe Machinery Company.

Mr. GREGG. At the time the combination was formed we admit that the patents were in existence—some of the patents.

The WITNESS. For the next few months after the formation of the United Company, and its taking over the companies admitted in the answer to have been taken over by it, I remember no company that was putting out lasting machinery, heeling or metallic machinery, pegging machinery or welt sewing and outsole stitching machinery, except the United Company. In May, 1906, I discussed for the first time the leases of the United Company with Sidney W. Winslow, the president of that company, at his office.

Q. Please state the substance of the conversation you had with Mr. Winslow at that time; that is, what he told you and what you told him—the substance of the conversation you had with him in 1906.

Mr. CHOATE. I pray your honor's judgment.

Mr. GREGG. I think it shows intent to monopolize.

Mr. FOWLER. If your honors please, I would like to state our position in regard to this matter, because we are going to present quite a number of witnesses whom we want to testify, and will ask to testify, in regard to different conversations with Mr. Winslow. Now, our position is that these leases and these agreements do not tell the story by any means of the United Shoe Machinery Company. Our position is that what Mr. Winslow and the officers of this company stated tends to indicate the purpose and the intention, not only of the original organization of this company,

but its ultimate object of monopolizing and maintaining a monopoly of this entire business; and indicates the methods of its operation and the purposes for which it was being operated; and that we have got to reach the final conclusion not only from the leases themselves but from the manner in which the leases were enforced, and the purpose of the leases as manifested by various conversations with various people.

BROWN, J. What is there more than insistence upon the tying clauses, which you have already put into this case, in all these leases? What do you propose to add to that?

Mr. GREGG. May the court please, in addition to the tying clauses and the provisions in the leases themselves, it shows the intent.

148 BROWN, J. The intent is apparent on the face of the document, isn't it?

Mr. GREGG. It is, in a way, but I suppose their defence will be: "We didn't intend to get all the business." I don't know what their defence is going to be, but I assume that is what it will be: "We didn't intend to monopolize the shoe machinery business, we were not making any attempt to get it all." And I think this conversation with the president of the company is certainly competent to show that it was their intent at that time to monopolize the shoe machinery business, that they wanted to have it all, and that that was the very purpose of the tying clauses of the leases.

BROWN, J. Is it admitted that those were not merely accidental clauses in the leases, but that they were really relied upon and enforced?

Mr. CHOATE. You mean the restrictive clauses?

BROWN, J. Yes.

Mr. CHOATE. Oh, certainly, they were not accidental; they were framed to accomplish exactly what they seemed to be intended to accomplish.

BROWN, J. And were applied in practice?

Mr. CHOATE. In some instances; yes, sir.

Mr. FOWLER. As stated by Mr. Gregg, and as the Supreme Court especially emphasized in the Standard Oil case and in the tobacco case, this is largely a question of intent. The court had intimated before that where there was a restraint that the restraint was unlawful regardless of the question of intent; but the court went back to the common law rule and said it is a question of whether it is a restraint under the common law. And the court especially emphasized the idea that it depends upon the intent to monopolize; and we want to show here that not only do these leases have the effect of monopolizing but from the

conduct of these parties and the various conversations of Mr. Winslow and the other parties, it was their deliberate intent to monopolize from the very beginning.

The WITNESS. In May, 1907, Mr. Winslow sent for me, and I went to his office with Mr. W. H. McElwain, another shoe manufacturer who is now dead. We urged Mr. Winslow to abandon the tying clauses and promised in case he felt willing to do that, to do our utmost to assist him in defeating certain legislation which was then pending, and bringing about a better feeling among our associates in the trade. After the conversations, extending over about 3 days, Mr. Winslow said, "It is quite impossible," or "It is out of the question for me to consider abandoning those clauses. You know that tying these machines together is absolutely essential to the success of our business. Without these tying clauses any of the machines from everybody would creep in, and you know what sort of people the manufacturers are, what use they would make of that competition. They would destroy our profits and destroy this method of doing our business, and that I can't concede under any circumstances.

If this business has got to be done under that class of
149 conditions, this company has got to get another president."

At the present time we use lasting, welting, stitching, metallic fastening, and heeling and heel-compressing machines supplied to us by the United Company, and some of the auxiliaries that go with the welters and stitchers. We do not use any such machines put out by other concerns. I know that Thomas G. Plant developed and manufactured a line of machinery for performing the operations of attaching the bottoms to the uppers of shoes, and I examined his machines at different times during one entire day in the early part of June, 1910, hoping to be able to use them. Mr. Plant offered me a complete line of machinery for my factory. He offered to replace every machine that was then in my factory belonging to the United Company for an amount between one hundred and twenty-five and one hundred and fifty thousand dollars. That is, he offered to equip my factory generally as well as it was equipped. I did not accept Mr. Plant's offer, principally because of the covenants in our leases from the United Company. This offer of Mr. Plant was made in conversation—not in writing. At one time I entered into negotiations with Mr. Plant with a view to acquiring an interest in his machinery and inventions. Mr. Jackson Johnson, of St. Louis, representing the Roberts, Johnson & Rand Shoe Company, Mr. A. B. Brown, of St. Louis, representing the Hamilton-Brown Shoe Company, Mr. George Brown, of St. Louis, representing the Brown Shoe Company, Mr. Henry N. Peters, of

St. Louis, representing the Peters Shoe Company, Mr. Milton S. Florsheim, representing the Florsheim Shoe Company, and Mr. Selz, of Chicago, representing the Selz, Schwab Shoe Company, were associated with me. These gentlemen came to Boston for the purpose of negotiating with Mr. Plant. We met him on September 22nd at the Hotel Touraine, and he made us an offer to sell us an undivided one-half in his shoe machinery business for one million six hundred thousand dollars. He was unable to specify exactly what property, patents, and machines he proposed to sell, insisting that it was not necessary; that we had seen his machinery in operation; that he would get certain machines completed; that he had the jigs, the
150 tools to manufacture them in large quantities, and that we must accept his statement that he would sell us a full, undivided one-half, subject to our verification of the facts from his books after the transaction. That happened between eight and nine o'clock on the evening of the 22nd of September. We were unable to bring the negotiations to completion that night, although Mr. Plant insisted that he must have an answer before he left the room. We were unable to agree with him on all the details, and we left, hoping to see him in the morning, although he said the transaction was closed as far as he was concerned when he left the room. I talked to him within twenty-four hours after that time in my office. He told me that he had left our meeting that evening, gone directly to the office of Mr. Herrick, on State Street, who was counsel for the United Company, and that he had there closed up a transaction with the United Company, selling not only his shoe machinery, but also his shoe business to them. He said that he had signed the papers before he left Mr. Herrick's office that night.

Q. Mr. Jones, from your knowledge of the shoe machinery business, do you know of any concern, any single concern, in this country to-day, who on December 12, 1911, could furnish machines for the purpose of fitting out a shoe factory for the manufacture of welt and turn shoes?

Mr. CHOATE. I pray your honors' judgment. He isn't an expert on shoe machinery.

A. There was no other that I know of besides the United Shoe Machinery Company.

At one time I had a top-piece compressing machine, for compressing top pieces of heels, built by a man named Young in Lynn. I had a conversation with Mr. Wilson, of the United Company, with regard to it six years ago.

(The United States offered to prove that Mr. Wilson said to Mr. Jones that he ought to put out the machine and use the

machine of the United Company; that he did not think Mr. Jones ought to encourage little fellows like Young by using their machines.

Mr. CHOATE. My understanding is that he (Mr. Wilson) was assistant to the general manager.

PUTNAM, J. What misrepresentation of threat was there there?

Mr. GREGG. There was no misrepresentation, and I should say there was no threat, but it does seem to me that those circumstances tend to show that the purpose was to discourage the use of independent machines and to induce shoe manufacturers to use exclusively the machines of the United.

151 BROWN, J. Do you go so far as to say that it is a violation of the Sherman Act when a man asks a manufacturer to take out his machine and put another machine in?

Mr. GREGG. Not standing alone, your honor. There may be a great many acts standing alone which are perfectly lawful, just as the court said in the Swift case; but if all those several acts become part of a plan to monopolize, then the plan may make the parts unlawful.)

Mr. FOWLER. Your honor, just one moment in regard to that matter. It seems to me what this man Wilson said should be taken in connection with the circumstances that actually existed. Here was Mr. Jones, who had a great number of leases from Mr. Wilson's company, being absolutely bound hand and foot, as it were, under those various tying clauses, except with reference to one or two machines. Now, here was a machine that Mr. Jones had in his factory belonging to another small manufacturer of machines by the name of Young. Now, I submit that Wilson didn't have to go under those circumstances nearly so far in his suggestions to make them have the effect of a threat.

BROWN, J. But Mr. Gregg disclaimed a threat.

Mr. FOWLER. Well, I submit, may it please the court, that in view of all the circumstances the effect was just exactly the same as though it were a threat.

BROWN, J. Then it is a different allegation—a different proposition. The proposition that he threatened this man and the proposition that he induced him or tried to induce him to take out his machine and put in one of the United Company machines are absolutely distinct propositions.

Mr. FOWLER. I submit the evidence is competent.

PUTNAM, J. It didn't result in anything, did it?

Mr. FOWLER. I am not sure that it did, but the very fact that he was there endeavoring to get him to take out one machine

that belonged to a little competitor is enough to make it competent to show what the animus was behind the act.

PUTNAM, J. Do you know a good many drummers?

Mr. FOWLER. Fortunately, probably not a great many.

PUTNAM, J. I don't know whether you are fortunate or unfortunate. They are pretty good fellows. If you knew a lot of drummers, I don't think you would find any fault with this.

Mr. FOWLER. This man was not a drummer. He did not occupy the same relation to this company as a drummer would. If he had been simply a drummer, a salesman, I would see nothing especially vicious about it—and I am not saying it was especially vicious anyway. But here was a man who was one of the active superintendents of the company, and he was endeavoring to crush out, as it were, what little trade a small competitor had in this factory in that way, and it does seem to me it is admissible. It may not be entitled to very great weight, but I think it is entitled to be looked into for what little there is in it.

152 PUTNAM, J. We do not look at it in quite that way.

Mr. FOWLER. We would like, then, that the record should show the substance of it.

PUTNAM, J. It is all in the record.

On December 12, ~~1191~~, I had between fifty and sixty welters and stitchers in my several factories. During the year previous to December 12, 1911, we had paid to the United Shoe Machinery Company royalties amounting to very nearly fifty-nine thousand dollars upon them. During that year we paid total royalties to the United Company on all its machines amounting to very close to seventy-nine thousand dollars.

I received a copy of the circular letter issued June 10, 1910, by the United Company (Exhibit 146) stating that it would create a fund of its common stock out of moneys received from royalties on Goodyear machines for the benefit of shoe manufacturers. I think I received five hundred and twenty-seven shares of the common stock of the United Company. I disposed of the stock, but have retained the money. I received the stock in the early part of the present May.

Mr. GREGG. I may state at this time the purpose for which I offer this exhibit and the testimony of the witness. It is for the purpose of sustaining the allegation in the petition on page 26.

PUTNAM, J. Isn't the exhibit in already?

Mr. GREGG. Yes, it is in. It went in this morning.

"They have offered and granted, and now are offering and granting, rebates to boot and shoe manufacturers who use exclusively one or more of the machines owned or controlled by them."

Mr. FOWLER. I would suggest right there, in order to save calling other witnesses on the same subject—Mr. Choate, won't you admit that these rebates were paid to all your lessees?

Mr. CHOATE. We don't regard them as rebates. We put out this plan in June, 1910, and carried out its terms.

Mr. FOWLER. That is, you did the same thing with the others?

Mr. CHOATE. Everybody that complied with these leases—we did exactly as we promised to do in that letter of June, 1910, and notified the Attorney General before we did it that we were going to do it. Perhaps you will produce the notice.

BROWN, J. Was this before the filing of the bill?

Mr. FOWLER. No; but just before he was going to send out this stock. Just before he was going to distribute the stock Mr. Choate came and told us he was going to do so.

Mr. GREGG. The stock was distributed the 1st of January of this year, wasn't it?

Mr. CHOATE. No, in May; this month; and you were notified. What time was it, Mr. Fowler?

Mr. FOWLER. I don't remember. I will look it up.

Mr. GREGG. The date of the circular is June 10th, 1910.

Mr. CHOATE. Will you produce that letter, please, at your convenience?

Mr. FOWLER. I haven't such a vivid recollection about the letter as about the fact that you came in and told us. I don't think you wrote me what you wanted to see me about.

Mr. CHOATE. I handed you a letter addressed to the Attorney General, which you took to give to him.

Mr. FOWLER. If I can find it in my office, I will bring it.

153 The WITNESS. I have used in my factory the Acme leveler and also I use the automatic leveler; both of them can be used for performing the same operation on any kind of shoes that we make. The Acme will perform just as good work as the automatic on any kind of shoes that the automatic will level.

Mr. CHOATE. I understand you have asked him to produce a list of his machinery, and you mean to recall him again when he puts that list in?

Mr. GREGG. Yes; I should like to do that.

The WITNESS. May I understand that request? I would like to know just what you want, a list of all the machinery?

Mr. GREGG. A list of all the machines that you had on December 12th, 1911, from the United Shoe Machinery Company.

The WITNESS. I don't know that I can get that. We keep no record showing when machines were transferred. I can show

what we have at the present time. I don't know whether I can ascertain exactly the number we had on December 12th.

Mr. GREGG. Well, see if you can ascertain.

Cross-examination:

We have both the Acme and automatic leveler in our factory. I know nothing exceptional about our particular demand for machinery.

Q. So that there may well be a need for having both machines in the same factory at the same time?

A. There may be, but there isn't.

Mr. CHOATE. I ask that the last part of the answer be stricken out.

PUTNAM, J. Strike it out.

Mr. CHOATE. Just notice my question, Mr. Jones.

The WITNESS. My office is in Boston. Mr. Reed is in direct charge of the manufacturing end of our business. One of our factories is in Whitman. I have not been there probably for a year, and have not been in our factories at Skowhegan and Gardner for two or three or four years. Mr. Reed makes the arrangements for obtaining the machines in the factories under his control, after consultation, and during the last two years, approximately, has signed the leases. Previous to that I signed them.

The circular letter of June 10, 1910, to which I have referred, came to my hands in the regular course of business. Subsequently a blank application for stock was sent me, with a request to sign and return it. I filled it out and sent it, thereby applying for the stock, and it was sent to me in accordance with the terms of the circular, as far as I could judge.

154 I met Mr. Thomas G. Plant on September 22nd, 1910, in company with certain other gentlemen whom I have named, Messrs. Jackson Johnson, A. D. Brown, George Brown, Henry Peters, Milton Florsheim, and Selz. A Mr. Campbell was also present. He is not a shoe manufacturer. There is no such organization as the Shoe Manufacturers' Alliance that I know of. There has been, and all of the gentlemen whom I have named, including myself, belonged to it, except Mr. Campbell. I joined it about six months after it started.

Q. Well, while you belonged to that alliance you spent a good deal of your time in attacking the United Company, didn't you?

A. Not very much; no, sir.

Q. Well, more or less of your time, didn't you?

A. Why, I made two visits to Washington, and I appeared before the Massachusetts Legislature; perhaps three visits to Washington.

Q. Well, the principal object of the Shoe Manufacturers' Alliance was to attack the United Shoe Machinery Company, wasn't it?

A. No, sir.

Q. Well, that was one of its objects?

A. No, sir.

Q. Well, it engaged in that pursuit?

A. I beg your pardon. I don't think it ever did.

Q. Let's see. You say you made two visits to Washington. Did you visit the Attorney General while you were there?

A. I called on him once.

Q. And Mr. Fowler?

A. Yes, sir.

Q. To make complaints against the United Company?

A. I don't think we did. I think we discussed features of the case that he inquired of.

Q. Did you make complaints against the United Company while you were there?

A. I don't think we did. I don't recall it.

Q. Did you offer to give him the names of persons who would make complaints?

A. I don't think so. I think he already had them.

Q. At any time have you done so?

A. I don't think—I have had such a conversation with Mr. Gregg or some of his assistants. I think not with Mr. Fowler.

Q. You have with Mr. Gregg—offered to give to him names of people who would make complaints against the United Company?

A. No. That is not the way to put it. That is not the fact. I have offered to give him the names of persons who had knowledge concerning the dealings of the company. I didn't know whether they would make complaints or not.

Q. Did you expect those persons would be called as witnesses?

A. I had no thought of such a thing.

Q. Did he ask you to give him those names, or did you volunteer?

A. He asked me, or his assistant.

155 Q. To give you the names of what?

A. Of people who had dealings with the United Shoe Machinery Company and could give him information in regard to their business methods.

Q. That was all that he asked you for?

A. In substance. I do not think that I furnished him with the name of Mr. Jackson Johnson and have no recollection of furnishing him with the name of Mr. Peters. As to whether

some of the gentlemen whom I have named were with me at any time when I was in Washington, I think some of them were. On one occasion I went to the Attorney General's office with them. Mr. Rand was present, and a few others who were members of the Shoe Manufacturers' Alliance. I can not tell you which ones.

Q. Well, now, did you also appear before one or two committees of Congress to make complaints against the United Company?

A. I appeared before two committees——

Q. Just answer my question, please; did you or did you not?

A. I don't see how I can answer the question. You don't ask it correctly.

Q. You can answer yes or no. Did you or did you not appear before one or two committees of Congress and make complaints against the United Shoe Machinery Company?

A. Well, I will say yes; as near as I can judge what you mean.

Q. That was the winter before this very last one?

A. That was in February and March of 1912.

Q. And you spent a number of days there detached from your shoe business in Massachusetts, sitting around committee rooms and making complaints, didn't you?

A. Yes, sir.

Q. And you brought people there, didn't you—other people with you?

A. No; I didn't bring anybody.

Q. Well, you notified people asking them to come, didn't you?

A. I have no recollection of it. I may have done so.

Q. You might have done so?

A. But I don't recall it. I do not deny informing some of my friends in the alliance, including those in St. Louis, to come with me and make complaints. I may have done so. I have no recollection of any such thing. But I don't deny it. I have an indistinct recollection that Mr. Jackson Johnson was there on other business. I don't think he came for that pur-
155a pose. Mr. Rand was present at one of the committee hearings at which I was present, but not in consequence of my sending for him, that is so far as I can remember. I couldn't tell you if the alliance was represented by counsel there. Our counsel was present. Mr. Louis D. Brandeis was counsel for the Shoe Manufacturers' Alliance. I don't think he addressed the committee in behalf of the alliance. My recollection is that he addressed the committee in favor of some amendments to the Sherman law which he had assisted in draw-

ing up. I was present on two days at hearings before the congressional Committee on the Judiciary. I believe Mr. Brandeis was also present. He may have said that he was representing the Shoe Manufacturers' Alliance. I don't deny it. He has not been paid by the alliance for anything which he has done for us. He doesn't take any pay from us, though he is our counsel and was there at that time. He was advocating amendments of the Sherman law before the Committee on Judiciary. I think he incidentally brought in some complaints against the United Company but it was in his argument in favor of the amendment.

Q. You also appeared before a Committee on Interstate Commerce?

A. In the United States Senate.

Q. And made some complaints against the United Shoe Machinery Company?

A. I made a statement referring to pending legislation.

I also have appeared before one committee in Massachusetts, and have complained against the United Company's leases. I did not go to Canada to agitate against the United Company. I was in Canada with Mr. McClennen, who is Mr. Brandeis' partner. I did not go to see any of the Government authorities, and I did not see any of them. I have published articles in the newspapers attacking the methods of leasing machinery employed by the United Company.

156 Q. Are you conscious of having any bias against the United Shoe Machinery Company?

A. I am conscious—no, none at all. I haven't the slightest bias. I am a stockholder and director in the Boylston Manufacturing Company. I have a stockholding interest in it that is large for me. Messrs. Jackson Johnson, Florsheim, Selz, and Rand, most of the people whom I named as members of the alliance, are also stockholders or directors of the Boylston Company. The Boylston Manufacturing Company advertises, manufactures, and has for sale shoe machinery. Its capital stock is something like five or six hundred thousand dollars. I have been interested in it about six months. Its place of business is in Boston and it is engaged in manufacturing shoe machinery to some extent.

Q. How long have you been trying to become interested in the manufacture and sale of shoe machinery yourself?

A. Never.

Q. I understood you to say that you tried to obtain an interest in Mr. Plant's inventions and machinery in 1910. Is that or is that not true?

A. That is true. I misunderstood your question.
Q. Had you before that time tried to get into a business manufacturing shoe machinery—before you tried to get into Plant's business?
A. Let me see. About 1894 or 1895 I bought an interest in the Simplex slugger, which we used in our factory.
Q. I am not talking about the use of it. Did you then, to any extent, engage in manufacturing and marketing shoe machinery?
A. To a very slight extent.
Q. Since then, and between that time and when you tried to get into Plant's business, have you attempted otherwise?
A. I have no recollection of any attempts. The gentlemen who tried, with me, to get an interest in Plant's business were shoe manufacturers and the same I have mentioned as former members of the Shoe Manufacturers' Alliance.
Q. When did that depart this life?
A. When the experimental factory, which was built to try machinery, which we had equipped was burned out and destroyed, we dissolved.
Q. When was that?
A. I can't tell you exactly; I should think it might have been six months ago or eight months ago.
Q. Then the men who wanted, with you, to go into Mr. Plant's business were Mr. Jackson Johnson, Mr. Florsheim, Mr. Peters, Mr. Rand, and Mr. Selz?
A. Yes, sir.
Q. You spoke of September 22d as the time you made that effort?
A. Yes, sir.
Q. Had you tried before that time?
157 A. Yes, sir.
Q. Had you tried as early as the spring of 1910?
A. No—wait a minute. Had I ever——
Q. In May or June, 1910?
A. Had I tried to get an interest in it?
Q. Yes.
A. I had said to Mr. Plant——
Q. Just answer my question.
A. I can hardly answer you, for I don't know what you would call "tried." I told Mr. Plant our feeling——
Q. You have already answered that question to Mr. Gregg and myself.
A. I have no need to answer it again, then.

Q. I mean you have answered as to the word "tried"—that you tried to get in. You understand what it means?

A. Not exactly, Mr. Choate. I am sincere; I don't quite understand what you mean.

Q. You said you examined Mr. Plant's machines?

A. Yes, sir.

Q. Where?

A. At his factory.

Q. Anywhere else?

A. In the basement of his factory where he had some stored.

Q. Mr. Plant was engaged in the manufacture of ladies' shoes?

A. Yes, sir.

Q. Exclusively?

A. Yes, sir.

Q. The machines that you saw were built to manufacture ladies' shoes?

A. Men's also.

Q. They were built peculiarly adapted to manufacture ladies' shoes which he was making?

A. No, sir; they were not.

Q. Did you ever see anything but a lady's shoe made on them?

A. No, sir.

Q. To your knowledge, did he make anything except ladies' shoes on them?

A. I don't think he did.

Q. That is the only kind of shoes he dealt in?

A. Yes, sir. He didn't make them for his own use, however, exclusively; he made them for the trade.

Mr. CHOATE. I ask that that be stricken out as not in answer to any question I have asked.

PUTNAM, J. It is not responsive. It may be stricken out.

Q. You were making altogether men's shoes?

A. Yes, sir. We made a few women's shoes at that time, but only a few.

Q. You said that Mr. Plant made an offer to put certain machines in your factories?

A. Yes, sir.

Q. In connection with that offer did he suggest to you that you become interested with him in the shoe machinery business?

A. No, sir.

158 Q. Was the offer made to any person beside yourself at the same time?

A. What do you mean; about putting in the machinery?

Q. Yes.
A. Not in my hearing.
Q. Do you know Mr. Henry Endicott?
A. I do.
Q. Do you not know of the same offer being made to him at the same time?
A. I know it in the same way that I knew a lot of things you excluded this morning. I know it; I am convinced of it, but I didn't hear it, and so I haven't personal knowledge of it.
Q. Isn't this a fact, Mr. Jones: Mr. Plant suggested to you that you become interested in his machinery business?
A. Not at that time.
Q. And that his machines be placed in your factory?
A. Not at that time.
Q. Well, at some time?
A. Later on; in September.
Q. Long prior to September?
A. No, sir; he never suggested to me to become interested in his shoe machinery prior to September.
Q. Did he not suggest that you invest some money in his shoe machinery business?
A. No, sir.
Q. Or that you advance money to him?
A. No, sir.
Q. And in that way become interested?
A. Never did anything of the kind.
Q. And that you then equip your factory with his machines?
A. No, sir.
Q. That you and Mr. Endicott should equip your factories with his machines?
A. The only part of that that is correct is that he asked me to equip my factory with his machines, and named a price for his machines which I was to pay for them in cash.
Q. You have knowledge of the fact of his making a similar offer to Mr. Endicott?
A. I heard it; yes, sir.
Q. And did he not then suggest to you that after you had done that you three gentlemen sell out the entire shoe machinery business to the United Shoe Machinery Company?
A. I never heard of that until this moment.
Q. And that you three could go on and manufacture without paying royalties?
A. Nothing of the kind ever occurred.
Q. You never heard of that before?

A. Never heard of it until this moment.
Q. You haven't been asked this same question before?
A. Never.
Q. And haven't heard Mr. Plant testify to that fact?
A. Never have; it isn't a fact anyway, whether he testified to it or not.
Q. Were you present at the trial of the case of one Smith v. Thomas G. Plant, in Worcester?
A. I was there a day and half.
Q. Did you hear Mr. Plant testify?
A. Part of the time.
Q. Did you not hear him make that statement under oath?
A. No, sir; I never did.

159 In September, what Plant offered me and my associates was a half interest in his shoe machinery, and inventions only. When he left us at that time we had given the matter sufficient consideration but we had not got the money with us. He made a suggestion to us and we wanted time to discuss it, but before we had had time to discuss it he left us and went away. At the beginning he had told us that if his proposition was not accepted then and there that was the end of it. He did not leave the offer open.

There was never any suggestion on his part or ours that we become interested in the Thomas G. Plant Company which manufactured shoes. He didn t offer us any interest in that property, and we didn't ask to buy any. He never offered us anything more than an undivided half interest in the inventions and the machines embodying them.

When I was in Canada with Mr. McClennen I didn't go there to investigate an attack on the United Company. I met Mr. Caron. I think I did not know until I got there that he was one of those who petitioned for an investigation of the United Company there. I found it out while I was there. I talked with Mr. Caron endeavoring to buy some machinery from him. We met him at his works, and then he went with us to the hotel. We had some meal with him at the Hotel Frontenac. We talked about the United Company, but I do not remember making any complaints in his hearing about that company. I should say it was possible that I may have complained about their leasing methods. I do not remember giving him any information regarding the United Company. I don't deny it. I don't know anything about it. I don't recall it. I met him by appointment, and was with him part of two days. He told me that he was one of the petitioners for an investigation of the United Company, and I probably knew that fact while I was talking to him about

matters connected with the United Company. That was about two years ago.

160 Referring to my talk with Mr. Winslow, I am asked to point out in plaintiff's Exhibit 15, the lease for the Consolidated hand-method lasting machine, the provisions which I complained of.

We do not use the Consolidated hand-method lasting machine at present. We may possible have one or two. We do not use the Number Five. We have tried them and thrown them out. I haven't visited the factory for three years. I have marked the provisions in the consolidated lease that I complained of.

To the best of my recollection, the second conversation which I had with Mr. Winslow regarding the leases of the United Company took place in May, 1907. Mr. Winslow, Mr. McElwain, and I were there. Mr. Howe was present from time to time. In the conversation, Mr. McElwain and I did not indicate the particular provisions I have marked but spoke of the tying clauses. By "tying clauses" we referred to the clauses which restricted the use of some machines to use with others and to the full capacity clause. I think that what I have said indicates the clauses that are marked there. I do not know how to describe them. We spoke of the tying clauses, meaning all that class of clauses. I couldn't say whether we had others in mind besides the two I have mentioned.

He [Mr. Winslow] said he could not consider cancelling the tying clauses; that those clauses gave him complete control and that that control was necessary for the successful carrying on of the business; without that complete control other machines of other manufacturers would creep in. The manufacturers, whom he characterized as a bad lot, would take advantage of that competition and would not make prompt payment to him or to the other men either; they would use one to play against the other, and a condition would result that would be unprofitable to his company. He wouldn't have anything to do with the business run on that basis; that if they had got to run it that way, if the shoe machinery business had got to return—what was in his mind was the condition existing before, what he referred to when he said, talking to me: "You know what would happen, that the intense competition that existed before would return." And he wouldn't have any part in a business of that kind. He said: "This company has got to have another president if the business has got to go back to that condition."

Q. This is the same conversation, the conversation you are now giving, as that which you undertook to testify about on direct?

A. The same substance, same conversation.
Q. Did you say anything on direct about control or complete control?
A. I can't tell you what I said. It was the same idea.
Q. I am not talking about ideas; I am talking about words. You are repeating somebody else's words?
A. Oh, no.
161 Q. Or the substance?
A. The substance; that is all. I am not trying to give the words.
Q. Did you say anything on direct about Mr. Winslow having complete control?
A. I can't tell you whether I did or not. That was the idea.
Q. I am not asking you about the idea at all.
A. That was the substance.
Q. Pardon me, now. I am asking you about what you said.
A. Well, I have given you as near as I can the substance of it.
Q. Well, did you say anything about complete control; will you swear to it?
A. I will swear that I——
Q. Answer me yes or no.
A. Not perhaps in this case.
Q. I want you to answer yes or no.
A. Yes, he did.
Q. Did he use the words that he wanted to have complete control?
A. I wouldn't say about the words. That is the substance.
Q. I am not asking about the substance.
A. I can't tell you, Mr. Choate.
Q. I am calling your attention to this fact. As I have understood your direct statement and your statement on cross, they don't agree. For that purpose I am asking you to tell me, yes or no, whether it is a fact that Mr. Winslow said anything about complete control—on your oath, sir?
A. On my oath, the impression——
Q. I am not asking you about impressions.
A. I can't tell you the words, sir. It is impossible for me to tell you his——
Q. Then you can't tell whether he said anything about complete control or not?
A. I can tell whether he carried that idea or not.
Q. I am not asking you about the idea.
A. It is impossible for me to remember at this time the exact words he used.
Q. Then you don't remember them?

A. Not the exact words. I remember some of them, but not in relation to that control.

Q. Is it not a fact, Mr. Jones, that he said that continuity of operation of their machines was essential for the successful operation?

A. No, he didn't say that to me.

Q. You used the words, both on your direct and cross-examination, "continuity of operation"?

A. Yes. I have heard it so often that I used it inadvertently.

Q. If you will confine yourself to your examination, you used the words "continuity of operation"?

A. Yes, sir.

Q. As words that Mr. Winslow used?

A. Yes.

Q. And he used them with reference to the operation of some of the United Company's machines?

A. He didn't use them at that time. Those were not his words; no, sir.

162 Q. Then, both on direct and cross you put words into his mouth on the witness stand which he didn't use?

A. No, sir. I never pretend ——

Q. Now, one moment. Did he or did he not use in that conversation the words "continuity of operation"?

A. No, sir; I don't think he did. My best recollection is that he did not.

Q. Then, both on direct and cross you stated that he said something that he did not say?

A. I don't think so. I tried to give the substance only of what he said.

Q. Am I wrong in having understood you to say, both on direct and cross, that he used the words "continuity of operation"?

A. I may have used ——

Q. Pardon me. Answer yes or no.

A. I never intended to say that those were his exact words.

Q. I am asking you if you did say so.

A. I don't know; I might have; I don't think so. I was trying to express the idea that was in my mind.

Q. You now say he didn't use that expression?

A. I don't think he did at that time.

Q. Can you remember a single phrase or word exactly as he used it on that day?

A. Yes.

Q. Have you stated it?
A. No.
Q. The one thing that you remember, then, that he did say you haven't stated?
A. Yes.
Mr. GREGG. Ask him what it was?
The WITNESS. I have told about this conversation with Mr. Winslow two or three times. I have stated it about a year ago to Mr. Gregg, I am not sure whether in Mr. Fowler's presence or not, and have mentioned it to other manufacturers. I have put the substance of it in writing. Mr. Gregg has the writing. I did that about six months ago. That is the first time I remember to have put it in writing. I have not looked at the writing very lately.
Q. Have you ever stated on any one of the public occasions when you have been before public bodies making complaints against the United Shoe Machinery Company this conversation with Mr. Winslow?
A. I can't tell you, sir, I am sure; I don't recall.
Q. Can you remember a single instance when you said it?
A. Publicly?
Q. Yes, sir.
A. I don't recall any.
Q. And yet you have been complaining against him and his company before the Massachusetts legislative committee in 1911, before two congressional committees a year ago, and last winter in the Attorney General's office, and you have spoken before public assemblies, haven't you?
A. In relation to the Shoe Machinery?
163 Q. Yes.
A. On one occasion.
Q. You have delivered addresses?
A. No.
Q. In fact, with the exception of the iniquities of the New York, New Haven & Hartford Railroad, you have been more obsessed with the United Shoe Machinery Company than anything else?
A. I don't consider that a fair statement of the case, Mr. Choate.
PUTNAM, J. You are going a little too far, Mr. Choate.
The WITNESS. I did not write the pamphlet which I have before me. I referred to it before I marked the lease at your request. I have bought some copies of it. There was a time when I was friendly to the United Company, and when, instead

of making complaints against it and appearing before public bodies against it, I thought well of it and so expressed myself.

Q. You gave an interview, didn't you, as to your knowledge of the United Shoe Machinery business?

A. I did.

Q. And your views about it?

A. Yes, sir.

Q. Did you state at that time: "It has actually reduced the prices on many of its machines"?

A. I did.

Q. "It has placed others in our hands on a rental system that has saved us a very large investment of capital"?

A. I did.

Q. "It has certainly given more faithful care and attention to the running of the machines and keeping them in order"?

A. Yes, sir.

Q. "And in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies"?

A. That is correct, sir.

Q. Did you also say: "As far as I recall them, the royalties demanded by the company are the same, exactly in amount, that we have always paid"?

A. Yes, sir.

Q. "It is only fair to add that they have supplied us with many additional machines to do the minor parts of the work, without any charge at all"?

A. I think that was a mistake.

Q. Did you say that?

A. I may have. I think likely I did.

Q. "These machines have been of considerable value to us, both in the saving of labor and increasing the uniformity of the goods, and are such machines as would undoubtedly have cost us a round sum if the United Shoe Machinery Company had not been in a position to furnish them to us gratis"?

A. Yes, sir.

164 Q. Did you not also say, when you were friendly: "If you wish to know whether the company is charging us an unfair price for tacks and nails, will say that this is entirely untrue?

A. Yes, sir.

Q. "The royalty on some of their machines is derived from the price of the tacks and nails used on them; consequently,

the price which they charge for the tacks and nails is certainly greater than the same thing could be brought in the market, for use by hand." Did you say that?

A. I think so.

Q. "But, as a matter of fact, the Shoe Machinery Company charges us no more for tacks to-day than they did many years ago, when tacks in the open market were much cheaper than to-day; in fact, my impression is that they have actually reduced the price of tacks between 25 and 30 per cent, while everyone knows that the cost of tacks and nails in the open market has advanced." Is that true?

A. I think it was true at that time; yes, sir.

Q. And you so stated?

A. I think so.

Q. Did you also say: "I do not believe any manufacturer who has been honest and straightforward in his dealings with the company can show any clear grievance against the company, or can make out the slightest case of crowding or coercion?"

A. Yes, sir.

Q. "On the contrary, I can say for ourselves, that the question of royalties and machinery, which was formerly one of the most vexatious and exacting departments of our business, has ceased to give us any concern at all." Did you say that?

A. Yes, sir.

Q. "We were formerly obliged to examine new inventions, and were forced to make experiments with machines for months at a time, with the result that we obtained more or less bad work and were put to much useless expense, and the thought and attention of our best men was given to deciding between the merits of the old and the new." Did you say that?

A. Yes, sir.

Q. "We were obliged to dicker and trade with every different manufacturer of machinery all the time with the moral certainty that somebody who had more time and attention to give to it would get a better bargain than we were able to obtain; and with it all there was an enormous and perpetual shrinkage on account of the changes made necessary by the introduction and adoption of machinery that was not thoroughly and satisfactorily developed before being placed on the market." Did you say that?

A. Yes, sir.

Q. "To-day this is all changed. If we want a machine, we simply notify the company. Their agent confers with our foreman. The best machine known for doing the work is in-

stalled with little or no expense to us. We are obliged to pay a rental in some cases, which would amount to about the same as the yearly shrinkage in value of the machine if we had to buy it, but the capital which we would formerly have been called upon to invest is still in our possession for use in our regular business." Did you say that?

A. Yes, sir.

Q. "We are confident that we are getting the machine on as favorable terms as any competitor, and we are enabled to employ our time and ability in the legitimate branches of our business, and we have not, up to this time, been obliged to pay as much for this privilege as we formerly paid for the very much less satisfactory condition." Have you so stated?

A. I did in that case; yes.

Q. And you gave that interview May 24th, 1906, didn't you?

A. About that date.

(A printed pamphlet containing a statement by Charles H. Jones, appearing in the Shoe and Leather Reporter of May 24, 1906, and read in part by Mr. Choate, is marked "Plaintiff's Exhibit 147.")

JUNE 3, 1913.

Direct examination resumed:

During my examination by Mr. Choate I was asked by him whether I had ever been asked before a certain question with reference to Mr. Plant's proposition, and I replied that I had not. I now recall that Mr. Choate asked me some question during the Smith-Plant trial at Worcester, and it may be that that was the question to which he referred. I desire to change my answer so that it may read, "I may have heard the question before, but the occurrence referred to never took place." I also desire to correct my testimony with respect to the dates of certain interviews with Mr. Winslow. The interview in 1907 was earlier than May. That discussion took place in January or February, 1907. I further desire to correct my testimony with respect to my answer that I did not remember whether in any public addresses I had described that interview with Mr. Winslow in the same way in which I described it in my testimony. Upon examining the reports of the occasions upon which I addressed committees of Congress I find that I told the story to both of them in substantially the same manner in which I had stated it here.

166 The interview which I gave out in 1906 was given out at Mr. Winslow's solicitation. He asked me if I would give an interview to a reporter of the Transcript, and I said I would, and he said he would send him to my office. Later in the

day a man appeared in my office with an interview already prepared. It did not exactly meet my ideas of what I wished to say, and so I rewrote it, and substituted the one which Mr. Choate read. I changed my opinion with respect to the United's methods of doing business at the time of the interview with Mr. Winslow, in 1907, when he refused to abandon the tying clauses.

Q. From that time on?

A. From that time on, in a growing degree, as different circumstances showed me the disadvantage under which I, as a shoe manufacturer, was laboring in consequence of those clauses. For instance, I will make it plain, if I may——

Q. Why did you change your opinion?

A. I learned from time to time of occurrences which made the views expressed by Mr. Winslow——

Q. I asked you when you changed your opinion, and you said in 1907. I ask you now why you changed your opinion?

A. Because of the occurrences which took place following that interview with Mr. Winslow.

I said on cross-examination that I had not stated the substance of all Mr. Winslow said at the time of the interview in 1907. Mr. Winslow said at that time, "I now have the shoe manufacturers under my control," and demonstrated it by closing his fist and using other language. That and the words that accompanied it is what I had reference to when I said I had not told all that took place.

167 I went to Canada in 1911. At that time I had agreed to act with members of the alliance, and we were looking about for shoe machinery independent of the control of the United Company. I had heard that there was a man in Canada who had shoe machinery, and also that some kind of a prosecution was going on in Canada to nullify the tying clauses in leases. I thought I had better go up there to see the machinery and to learn all I could about the action which was proceeding there. I went for those two purposes. I saw Mr. Caron, who was manufacturing the machinery, and I also saw his counsel in relation to the litigation.

Q. You were also asked on cross-examination whether or not you had ever belonged to the Shoe Manufacturers' Alliance, and you stated yes.

A. Yes, sir.

Q. When did you join the alliance?

A. In May, at the time I speak of.

Q. May, 1911?

A. I think that was the year; yes, sir. Yes, sir; that was the year—May, 1911.

Q. Do you know how long the alliance had been in existence when you joined it?

A. It was organized the previous September.

Q. Why did you join the alliance?

A. At the earnest request of the members who wished to have some eastern manufacturer belonging to the organization, and because I sympathized with their views also, of course.

Q. So far as you know, what was the purpose of this alliance?

A. The purpose of the alliance is——

PUTNAM, J. Is it necessary to go into that, Mr. Gregg?

Mr. GREGG. On cross-examination of both this witness and Mr. Selz Mr. Choate has made a great deal of this western alliance, and the fact that these gentlemen were interested in the Boylston Manufacturing Company. I merely wanted to show why the gentlemen had gone into the western alliance and why it was acquiring an interest in the Boylston Manufacturing Company; that is all.

Mr. CHOATE. The subject of that agreement is in writing and is signed by them, and we don't object to its being put in.

PUTNAM, J. He may state in a brief way.

Q. State in a brief way what was the purpose of the Shoe Manufacturers' Alliance.

A. To secure to manufacturers the right to use such machinery in their business as they might from time to time find to be best fitted for their use and to do away as far as possible with the conditions which existed at that time and which prevented the use of independent machinery.

168 I acquired an interest in the Boylston Manufacturing Company about six months ago because we could see no other way in which to establish competition in shoe machinery. My interest amounts to between twenty and twenty-five thousand dollars.

Cross-examination resumed:

The statement of my 1906 interview which was read to me by Mr. Choate was the statement I gave to the reporter. It is in my own words, and expressed my views at that time.

Q. Before the Committee on Judiciary in the winter of 1912 at Washington were you not asked this question by Mr. Higgins of the committee: Referring to the statement which I have just called your attention to, your interview of 1906, Mr. Higgins said:

"I would like to ask some further questions in connection with your interview of 1906——

"Mr. JONES. All right, go ahead.

"Mr. HIGGINS. In which it appears you made this statement:

"'The terms which the Machinery Company have recently offered their patrons on certain lines of machinery are so liberal that the outsiders can not compete.'

"Mr. JONES. That was right.

"Mr. HIGGINS. Was that changed in 1907?

"Mr. JONES. No, sir. It has not been changed up to date.

"Mr. LITTLEFIELD. Hasn't been changed?

"Mr. JONES. It has not been changed up to date."

Did you so testify?

A. I think so.

Q. And that is true, what you then said?

A. As far as I know; yes, sir.

It was not one of the purposes of the Shoe Manufacturers' Alliance to foment and foster the prosecution of the United Company. I attended a meeting of the Shoe Manufacturers' Alliance in St. Louis in November, 1912.

Q. Did you at that meeting make any statement of the purposes which you had in joining the alliance?

A. I recall none; no, sir.

Q. Did you make any statement with reference to its being one of your purposes to follow the litigation in which the United Shoe Machinery Company was involved?

A. I don't think so.

Q. Do you deny it, sir.

A. I have no recollection. I should have to know more——

Q. Did you not as a part of the statement of that purpose make a report to the alliance of the progress of the litigation here?

A. I have no recollection on the subject at all, Mr. Choate; I couldn't answer you.

Q. Did you not make a report to the alliance of the
169 argument and the court's decision on the demurrer to the indictments against the United Shoe Machinery Company?

A. I may have told them what appeared in the newspapers. I don't recall that matter at all. I had no other information than what I read in the papers. I may have given them that.

I did not state that the general verdict was that Judge Putnam's decision on the demurrers was scandalous. I believe Mr. Rand, whom I know very well, was secretary of the alliance at that time.

Direct examination resumed:

I produce a list of machines of the United Company in the three factories of the Commonwealth Shoe and Leather Company, dated November 1, 1911.

(This list is marked "Plaintiff's Exhibit 150.")

Cross-examination resumed:

I understand that the list states only machines which we have obtained from the United Company. I did not personally make up the list. Some of the Goodyear welt and turn machines were leased from the Goodyear Company before the United Company came into existence, but I have no idea how many.

Mr. CHOATE. It will develop that a great many of those machines were leased of companies before the United came into existence. It will take some time to do it, but I think he ought to check that up.

I think that was what he was asked to produce the other day, because we were then on the extent to which the United Shoe Machinery Company supplied the trade. Now, my point is this: I am very sure that with a little analysis it will appear from this list that a great many of those machines were leased of companies before the United Company came into existence.

Q. Have you prepared any list showing all the machines that you use in all your factories?

A. No, sir.

Mr. CHOATE. Will you do so? Will you bring in a list of the machines that you obtained of other persons in use in your factories on the same date, please?

Mr. GREGG. We have no objection to that. Will you do that as far as you can?

The WITNESS. Yes, sir.

(Later the witness produced a list of all the machines in the factories of the Commonwealth Shoe and Leather Company, divided as requested of him, which was introduced as plaintiff's Exhibit 279. Plaintiff's Exhibit 150 was withdrawn.)

170 Mr. GREGG. I desire to offer as Government's exhibits three circular letters to stockholders—one to the stockholders of the McKay Shoe Machinery Company; another to the stockholders of the Goodyear Shoe Machinery Company, and another to the stockholders of the International Goodyear Shoe Machinery Company—sent out in February, 1899. I understand that counsel for the defendants admit the authenticity of these.

Mr. CHOATE. We admit them and do not require any further proof.

PLAINTIFF'S EXHIBIT 151.

BOSTON, MASSACHUSETTS,
February 15, 1899.

To the stockholders of the McKay Shoe Machinery Company:

The undersigned, directors of the McKay Shoe Machinery Company, have entered into an agreement with the United Shoe Machinery Company for the exchange of the stock of the McKay Shoe Machinery Company for shares of the United Shoe Machinery Company, upon the basis of $5.50 of the preferred stock and $5.50 of the common stock of the United Shoe Machinery Company for each share of the McKay Shoe Machinery Company, so that the stockholders of the McKay Company will receive $11 of the stock of the United Company (half common and half preferred) for each share of the capital stock of the McKay Company held by them. The United Shoe Machinery Company has been organized under the laws of New Jersey with an authorized capital of 1,000,000 shares, one-half 6 per cent preferred stock, and one-half common stock. The par value of both common and preferred shares is $25, and the common and preferred shares have equal voting power.

The United Company has contracted for the purchase of a majority of the stock or the purchase outright of the following companies:

McKay Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, Eppler Welt Machine Company, International Eppler Welt Machinery Company, Davey Pegging Machine Company.

The entire floating debts of the above companies will be paid, and there will remain in the treasury of the new company, after acquiring the above-named companies, at least $500,000 in cash and 150,000 shares of the preferred stock and 150,000 shares of the common stock.

Stockholders of the McKay Shoe Machinery Company who desire to exchange their stocks in the McKay Company for stock in the United Company must assign at once to the United Shoe Machinery Company their certificate or certificates of shares in the McKay Shoe Machinery Company, and deliver said certificates to James W. Brooks, 76 Lincoln Street, Boston, Mass., and the proper amount of stock in the United Company will be returned in exchange for the shares thus assigned and delivered.

No certificates and no receipts will be issued for fractions of shares, but fractions of the stock in the United Company will be

paid for in cash at par, and checks for such fractions of shares will be sent to shareholders with the new certificates.

The officers of the United Shoe Machinery Company are as follows:

Sidney W. Winslow, president; John H. Hanan, vice president; Wallace F. Robinson, vice president; Orlando E. Lewis, vice president; George W. Brown, treasurer and general manager; Lewis H. Baker, secretary.

Directors: Louis D. Brandeis, Josiah H. Clark, George E. Keith, Orlando E. Lewis, Rudolph Matz, Gordon McKay, James J. Storrow, Wallace F. Robinson, George W. Brown, Sidney W. Winslow, William H. Coolidge, William S. Eaton, Edward P. Hurd, Samuel Weil, Frederick G. King, Charles H. Cole, 171 John H. Hanan, William Barbour, Edwin H. Mathewson, Elmer P. Howe, Alfred R. Turner, jr.

Executive committee: William Barbour, George W. Brown, Elmer P. Howe, Edward P. Hurd, James J. Storrow, Sidney W. Winslow.

As the United Shoe Machinery Company expects to begin at once the payment of dividends at the rate of 6 per cent per annum on the preferred stock, and 8 per cent per annum on the common stock, it will be seen that the annual return upon the $11 of the new stock received for each share in the McKay Company will be 77 cents, instead of the 60 cents per share which is the present annual dividend paid upon each share of the McKay stock.

The undersigned have agreed to exchange all the stock in the McKay Company which they hold personally, and recommend the other stockholders in the McKay Shoe Machinery Company to also exchange their shares for shares in the United Shoe Machinery Company, because they believe that not only will shareholders receive an increase in dividends, but that the dividends will be rendered more permanent and more secure in the future.

JAMES W. BROOKS.
LOUIS D. BRANDEIS.
JOSIAH H. CLARK.
GEORGE E. KEITH.
ORLANDO E. LEWIS.
RUDOLPH MATZ.
GORDON MCKAY.
F. F. RAYMOND, 2D.
JAMES J. STORROW.

PLAINTIFF'S EXHIBIT 152.

BOSTON, MASSACHUSETTS,
February 8th, 1899.

To the stockholders of Goodyear Shoe Machinery Company:

The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe-machinery companies. For more than a year your directors and large shareholders have been in negotiation to accomplish this end.

After a thorough investigation of the financial condition and the business of the shoe-machinery companies named below, the organization of a corporation has been effected under the laws of the State of New Jersey, to be known as United Shoe Machinery Company.

The United Shoe Machinery Company has already contracted for more than a majority of the capital stock of Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Welt Machine Company, Davey Pegging Machine Company, besides stocks in other shoe-machinery companies, letters patent, and other property.

The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock.

JOHN H. HANAN.
WILLIAM BARBOUR.
EDWIN H. MATHEWSON.
ELMER P. HOWE.
ALFRED R. TURNER, Jr.

172 PLAINTIFF'S EXHIBIT 153.

BOSTON, MASS., *February 18th, 1899.*

To the stockholders of the International Goodyear Shoe Machinery Company:

The United Shoe Machinery Company has already contracted for more than a majority of the capital stock of Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, Davey Pegging Machine

Company, besides stocks in other shoe-machinery companies, letters patent, and other property.

The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock. . . . .

WILLIAM BARBOUR, *President.*

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JUNE 3, 1913.

EMANUEL F. SELZ, witness for the United States.

My name is Emanuel F. Selz. I am connected with the firm of Selz, Schwab and Company, shoe manufacturers. Our company manufactures men's and women's shoes. Our main office is in Chicago, and our factories are in various points in Illinois and Wisconsin. I am general manager of the manufacturing department of the company and have held that position for about twenty years. The capacity of our factories exceeds fifteen thousand pairs a day.

Q. Were you familiar with the trade in shoe machinery prior to the establishment of the United Shoe Machinery Company?

A. Yes, sir.

Q. I wish you would state in what manner you became familiar with the trade in shoe machinery.

A. Through trading for machinery, advertisements and general trade knowledge and the use of machines.

Q. Was your company in existence all that time?

A. We were a partnership up to 1890—incorporated in 1890.

Q. Were you holding the same position with the company that you are now?

A. Yes.

Q. Now, Mr. Selz, I wish you would state what kind of lasting machines were in use by shoe manufacturers at the time and just immediately before, or before, the establishment of the United Shoe Machinery Company.

Mr. CHOATE. Pardon me.

PUTNAM, J. Fix a date.

Mr. FOWLER. In February, 1899.

Mr. CHOATE. I assume the witness is limited to his personal knowledge, as was the previous witness?

PUTNAM, J. It is the same question as we had before—not in a matter of this sort. It would be his trade knowledge.

Mr. CHOATE. If it is other than personal knowledge, I should like to have our exception saved.

PUTNAM, J. Very well, it may be saved.

A. The Copeland rapid laster, the Chase lasting machine, the Consolidated hand method lasting machine, the Boston lasting machine were all in use.

Q. Do you know who was selling the Chase machine?
A. The Stanley Manufacturing Company.
Q. And who was selling the Consolidated hand method machine?
A. The Consolidated Hand Method Lasting Machine Company.
Q. And who the Boston?
A. The Boston Lasting Machine Company.
Q. And who the Ideal?
A. The Goodyear Shoe Machinery Company.
The McKay-Copeland machine was used on heavy work and was sold by the McKay-Copeland Lasting Machine Company. I once investigated the Seaver process and learned how it operated, but never used that machine. That was in 1890 or 1892.
Q. Now, Mr. Selz, was there any difference as to the uses to which these various lasting machines were put?
A. Practically none.
Q. Could they or not all be used in lasting ladies' shoes?
A. Yes.
Q. Could they or not all be used in lasting men's shoes?
A. Yes.
Q. How about children's shoes?
A. I am not familiar with them; never manufactured them.
Q. You never manufactured children's shoes?
A. No.
I never did any business with the Consolidated & McKay Lasting Machine Company.

174 The Goodyear Company at that time was selling the Ideal machine. At the present time no lasting machines are on the market that I know of except those put out by the United Company. Besides the Consolidated hand method laster the United Company has developed what it calls its Number Five machine, and also has brought out the Rex pulling over machine which does another part of the lasting operation.

At the time when the United Company was organized there was on the market a sole laying machine made by the Sole Laying Machine Company, and another made by the American Sole Laying Machine Company. The two machines I mentioned were capable of doing exactly the same work. The only sole laying machine that I know of now obtainable in the United States by either purchase or lease is that made by the United Company. At the time when the United Company was formed there were four slugging machines on the United States market. They were the wire grip slugging machine made by the Wire Grip Slugging Machine Company, the Simplex, which also was marketed by that company, the Champion, which was sold by

the Champion Nailing Machine Company, and the Universal, which was then put out by the McKay Metallic Fastening Machine Association. To-day the only slugging machine on the market so far as I know is the Universal machine manufactured by the United Company.

At the time of the formation of the United Company there were on the market three pegging machines, namely, the New Era, the Varney, and the Davey, each made by a different company. The only pegging machine which is being offered in the United States to-day so far as I know is that put out by the United Company.

At the time of the organization of the United Company there were on the market the Goodyear, Eppler, and the Bertrand welting and stitching machines. I have heard of the Globe machine, but I never examined it and have no personal knowledge of it except what I have received through advertisements and hearsay knowledge in the trade.

175 Q. State whether or not, Mr. Selz, these machines that you have mentioned were doing the same work, or accomplishing the same results.

A. Exactly the same work.

Q. Was there any difference between the Goodyear and Eppler machines? If so, please state what it was.

A. The Eppler machine had the chain in the formation of the stitch on the inside of the channel; the Goodyear has it on the outside. That is the only difference that I know of.

Q. Was there any material difference in the quality of the work done by the two machines?

A. None whatever.

Q. Was there any material difference in the rapidity with which the machines would do the work?

A. None that I know of.

I have used the Eppler and the Goodyear and the Bertrand machines. The Bertrand machine was a lock-stitch machine, was slower, and in my opinion did not do as good work as the two others.

I have in my factory Goodyear welting, stitching, and rounding machines which I leased before the organization of the United Company. I have used all three of the welting and stitching machines to which I have referred and am personally familiar with their operation.

We now have under lease forty or fifty welters and stitchers. Seventeen of them were in our factory when the United Company was formed. Some of them have been there for 6 years, some for 5 and some for 2. We do not notice any difference

between the kind or the character of the work done by these machines and that done by the new machines which we have. The oldest machine which we have in our factory has been there nineteen years. Others have been there seventeen years. We have no machines of the latest models.

A good operator can do 300 pairs a day on the welter and about 200 pairs a day on the outsole stitcher. We make McKay as well as welt shoes. The only welter which is to-day manufactured and put on the market so far as I know is that manufactured by the United Company.

Welting machines could be purchased from the Haverhill Shoe Machinery Company, but I never installed one of that company's machines. That is the only company that I know of except the United Company from which welting machines can be purchased. All of the welting, stitching, lasting, heeling, and
176 metallic fastening machines which are now in our factory were obtained by us from the United Company or from its predecessors under lease.

Prior to the organization of the United Company there were on the market four makes of sole rounding machines. There were the Ross machine made by the Ross-Moyer Manufacturing Company, the Smith machine, made by the Smith Rounding Machine Company, the Hartford, made by the Hartford Rounding Machine Company, and the Loewer, made by the Loewer Rounding Machine Company. All did pretty much the same work. The Ross machine is still on the market, and there is a Julian machine, made by the Boylston Manufacturing Company, as well as the Apex machine, made, I believe, by the United Company. There are no others, as far I know. At the time of the organization of the United Company there were on the market three types of heeling machines. There were the McKay machine, made by the McKay Heeling Machine Association, the American machine, made by the American Heeling Machine Company, and the National machine, made by the National Heeling Machine Company. All of these machines did the same work on all kinds of shoes. There are to-day only the American and the Mayo heeling machines, which are put out by the United Company.

At the time of the formation of the United Company there were five types of tacking machines on the market. These were the wire grip machine, made by the Wire Grip Fastening Machine Company, the string nail, and cable screw machines, made by the McKay Metallic Fastening Association; the staple, made by the Staple Tacking Machine Company, and the corrugated wire machine. The wire grip machine and the

staple machine are now put out by the United Company; so far as I know there are no others on the market. I have not studied the machinery in our factory enough to know the value of the several parts.

I was present at a conference held with Mr. Winslow
177 in St. Louis, in February, 1911. The subject of the conference was shoe machinery. Mr. Jackson Johnson, Mr. Milton Florsheim, Mr. Peters, Mr. George Brown, and I think Mr. George Selby, were present. The object of the conference was to discuss the general relations of lessees to the United Company with a view to securing better and freer conditions. There had been a meeting between Mr. Winslow and Messers. Johnson and Florsheim in Boston the previous September, at which an appointment was made for the conference in St. Louis.

Q. Now, was there any proposition submitted to Mr. Winslow with reference to a modification of the leases?

A. Yes, sir.

Q. Do you remember what the substance of those proposed modifications was?

A. Yes. There were three items in the memorandum we handed Mr. Winslow. The first one asked that each lease be confined to the machine that was the subject of the lease and not tied to any other.

Mr. CHOATE. Pardon me a minute. Wasn't this in writing?

PUTNAM, J. What do you propose to prove, Mr. Fowler?

Mr. FOWLER. I am proposing to prove that they submitted to Mr. Winslow a certain proposition looking to a very material modification of those leases.

BROWN, J. Was it in writing, he asks?

Q. Was the proposition in writing or not?

A. Yes, sir.

Q. Have you a copy of the writing?

A. No, I have not.

Mr. Winslow spoke of the good work that the United Company was doing, but did not reach any proposition about the modification of the leases. He was going to consider that later. He did not consider the matter of modifying the leases in St. Louis at all.

The previous September I had been associated with certain other gentlemen in negotiations looking to the purchase of the Plant machinery. We examined the machinery that was being operated by Mr. Plant in his shoe factory. Mr. Plant was making women's welt and McKay shoes. He had a complete

line of machinery for manufacturing shoes of those kinds. We spent half a day examining it.

178 Q. State what kind of work they were doing; that is, as compared with the machines you had in your factory.

(Admitted subject to defendants' objection and exception.)

A. It was equally as good as far as I could see.

Q. Were they doing it with as much rapidity?

(Admitted subject to defendants' objection and exception.)

A. As far as I could see.

Q. State, Mr. Selz, whether or not in your business in your factory you are brought in contact with welting machines and various shoe machines daily.

A. Yes, sir.

Q. What are your duties with reference to the machines in their operation in your factory?

A. With reference to the operation I engage the foremen; I have occasion to study the output of the machine—the cost of maintenance.

Q. Well, do you personally observe the operations of machines?

A. Yes, sir.

Q. State whether or not you know when a machine can be used on different kinds of shoes—that is, say, a welting machine.

A. Yes, sir.

Q. And how have you acquired that knowledge?

A. Through twenty-seven years of experience in and around machinery.

Q. State whether or not the machines in the Plant factory could have been used in the manufacture of men's shoes.

A. Yes.

Q. That is, you mean men's welt shoes?

A. Yes, sir.

Q. Were they used in the manufacture of welt shoes there in the factory?

A. Yes, sir.

Q. Was he manufacturing anything but welt shoes?

A. McKays also.

Q. And the McKay shoes?

A. Yes, sir.

Q. Could they have been used in the manufacture of the McKay men's shoes?

A. Yes, sir.

Q Did you observe those machines long enough to know about what their efficiency was with reference to the output or the amount of work done by the machines?

A. Not personally. I got that information from Mr. Plant.
Q. Did you examine them with sufficient care to know the quality of the work they were doing?
A. Yes, sir.
Q. What was the quality?
A. Good.

179 Mr. Plant offered to sell us a half interest in his Wonder Worker machinery for one million six hundred thousand dollars. His proposition was not accepted because we were informed that the machinery was sold before we had a chance to raise the money. My impression is that Mr. Plant's offer to us was made in the evening of September 22, 1910. We were with Mr. Plant until about eight or nine o'clock. The following morning we learned, I think from Mr. Plant himself, that the machines had been sold to somebody else. In the meantime we were attempting to raise the money.

Q. Now, after that, Mr. Selz, did you have a conversation with Mr. Winslow in regard to those leases?
A. We had a conference in St. Louis in February, 1911.
Q. That is the one you have detailed?
A. Yes, sir.
Q. Now, did you have another one after that time?
A. In May, 1911; here in Boston.
Q. For what purpose was that conference had?
A. That was pursuant to the one in St. Louis. We made an engagement there with Mr. Winslow to meet him in Boston and to get a proposition from him modifying the leases.
Q. Did you receive any proposition from him?
A. No, sir.
Q. Did he make a statement to you in which he explained why he submitted none?
A. He said that any change such as we suggested in the leases would ruin the system, and couldn't be made.

Cross-examination:

Before I began my business as a shoe manufacturer, I served an apprenticeship of four years in shoe making, cutting, and operating machines. I never had any training in the manufacture of machinery. I am a shoemaker, not a machinery maker. I have operated fair stitch and Chase lasting machines only. My office is in one of my factory buildings in Chicago. I do not operate any machines now, but I superintended their operation in a general way. My principal work is office work, and I study especially the product of machines and not the mechanical operation of the machine itself. In answering all

those questions as to what machines were in the market at the time of the formation of the United Company, I had in mind the whole period from 1890 to 1899. I meant to say that from the information that I had gathered sometimes from the people I dealt with, and sometimes from advertisements, but particularly from agents or people who claimed to be agents, and from obtaining machines for my own use, the machines which I mentioned were on the market sometime during the period to which I have referred. I didn't mean to fix any specific
180 date when those machines were being marketed. I simply meant that somewhere between 1890–1899 machines of the kind named by me were being marketed. That is all I meant and is as definite as I meant to be. About 1892 I negotiated with respect to the use of the Boston lasting machine, and about the year previous I had certain negotiations with respect to taking a Copeland rapid laster. In 1893 I negotiated for the Consolidated hand-method laster. We never had but two different machines in the factory at the same time. We tried the Copeland, but did not use it. We finally settled upon the Chase, instead of the Copeland. We used the Boston from 1892 to 1894. We got our Chase machines about 1891. We kept our Chase machines up to a few years ago. We still have the Boston machine. We continued, after the formation of the United, to use that machine, the Chase machine, and the hand-method machine, which we got first about 1893. I do not know anything about the history of the Copeland rapid machine after the time when we ceased to use it. About five years ago we voluntarily changed over from the old Chase machines to the new Number Five machines of the United Company. As to whether the leases on the Chase machines had expired, some of them had, I believe. I believe those leases run until the last patent has expired. We still use some of the hand-method machines. Some of them we hold on leases, which we obtained prior to the organization of the United Company.

We have had all the lasting machines that we have wanted and those which we desired to use have been continued to be put out by the United Company just as they had been by the other companies which were in the existence before the United Company was formed.

At different times we lasted both men's and women's shoes on the Chase machine. We also have lasted at different times both kinds of shoes on the Consolidated machine. We did our pulling over by hand. We never adopted the practice of lasting one part of a shoe on one of the machines and finishing it on another.

The Chase laster was best adapted for shoes of medium weight. Toward the end, we used it principally on welt
181 shoes. At one time we used it also on cheap McKay shoes. We use the Consolidated machine principally for lasting women's shoes and men's McKay shoes. At the present time we use it for McKay work in men's shoes and both McKay and welt work in women's shoes.

Q. Because you think the machines, as you have got them arranged, are best adapted for the work that you are sending to them?

A. Not as far as quality is concerned; no.

Q. Well, as far as results go?

A. As far as the cost is concerned; yes.

Q. As far as the cost is concerned?

A. Yes.

Q. Well, that of course is a material matter. You mean one kind of shoe you can last more economically on one machine, and another kind you can last more economically on another kind of machine?

A. Yes.

Q. And while it is perfectly true that you can last, I suppose, as a matter of physical possibility a great many different kinds of shoes on a Chase machine, there are some kinds of shoes that you can last much more economically than others on a Chase machine?

A. Yes.

Q. And while it is true that you could possibly physically last almost any kind of a shoe on the hand-method machine, there are some kinds of shoes which it does very much more economical work upon than others?

A. Yes, that is true.

We find it advantageous to have both kinds of machines and to make that subdivision of our work which gives each machine the kind of work which it is best adapted to do. We have been able to get both kinds from the United Company at any time we have desired them, and we have been supplied with the Number Five machines whenever we have wanted them. We took the Number Five in place of all our Chase machines which were pretty well worn out at the time. We hold them on the form of lease which involves no initial payment, I am reasonably sure. I never bought a lasting machine outright from the Goodyear Company, but I understood that the Florsheim Shoe Company and the J. E. Turner Shoe Company have done so.

It was my general knowledge that prior to the formation of the United Company the business method of marketing Goodyear

welting and stitching machines was leasing, not selling. I understood they sold lasting machines. I have no personal knowledge of their selling lasting machines; I never bought one. So far as I know the hand-method and Chase machines were all put in on lease. I never knew that the Copeland rapid machine was sold outright. We have bought a number of Boston lasting machines. I never dealt with the McKay and Copeland Company.

182 Q. Then when you said that these machines were sold in the market before the United was formed, you must limit it, mustn't you, so far as you know, to the Boston and possibly one or two machines of the Goodyear; that is, as far as you know anything about it?

A. As far as outright sales are concerned.

Q. All the other parties whom you named marketed their machines by leases?

A. Yes, sir.

I was a member of the Shoe Manufacturers' Alliance which equipped a factory in St. Louis with machines for manufacturing shoes. I never saw the machinery, but I believe the factory had lasting machines which were not hired from the United Company. I do not know what machines they were. I have heard of the Krentler lasting machine, but so far as I know it is not on the market now. The Krentler last factory is in Detroit, and I have some hearsay knowledge that he has a lasting machine, but I don't know that he is manufacturing them or putting them on the market. He advertises that he has a laster. I am one of the directors of the Boylston Manufacturing Company. It has one lasting machine which, so far as I know, has not been given any name. I do not think they have ever made more than one machine. They have certainly never marketed any. So far as I know, the Boston Lasting Company does not put out a machine now. I am not familiar with lasting machines made by the Atlas works or by the Standard Engineering Company. I believe R. H. Long uses a lasting machine of his own manufacture. I have no knowledge of the shoe machinery market outside of what we use in our factory except hearsay knowledge. I do not undertake to say that there are not lasting machines on the market of which I do not know. There may be many that I don't know of.

As to there being two sole laying machines on the market before 1899, all I meant was that somewhere between 1890 and 1899 there were two different kinds of machines on the market. Those were the Sole Laying Machine Company's machine and

the American. The American sole laying machine had a different method of operation from the ~~latter~~ other. We used both of them in our factory. We first put in a Sole Laying Machine Company's machine. Later the American Company's machine came on the market, and we bought it. Several years later
183 we discarded the Sole Laying Machine Company's machine and did all of our sole laying on the American machine. We now do some of it on the American and some of it on a new machine put out by the United Company. We lay the soles of welt shoes on the sole laying machines, but use tacking machines on the McKays. We use both of the sole laying machines that we now have on welt shoes indiscriminately. We had no difficulty in getting the United Company's sole layer because of the fact of having the American. The United Company has never endeavored to prevent our using the American machine. So far as I know the American machine is not now made. We have tried to get parts for it and have not succeeded. I do not know of my own knowledge whether any other sole laying machine except that put out by the United Company is now on the market. I do not know just how many of the slugging machines which I have named were on the market just before February, 1899. Some of them may have gone out of use before that time. The McKay Metallic Fastening Association was putting out slugging machines before 1899, which have ever since been offered to customers by the United Company. I would not say that we got the same slugging machines at the same rates of payment for our material. We had always had a discount prior to 1899. I mean we had a 25 per cent discount at that time. Before 1899 we bought from the McKay Metallic Fastening Association the material for use on the Universal machine, which was the machine they put out. We had been buying it from them for a number of years. The machine was put out on loan lease, but the only payment we made for the use of the machines was the payment we made for the material we used on them. That is the same way to-day and always has been for those slugging machines. The price paid for material used on the McKay machines is the same to-day as it was back before 1899; on the wire grip it is not. On the McKay metallic fastening machines, so far as I can remember, the price is just the same as it was back of 1899.

Our slugging machines are all held on leases obtained since 1899. They were taken on the form of lease without initial payment. I never knew that there was any other form of lease. I did not make any inquiry and never have.

We have no pegging machines in use at present. We formerly used the Varney and New Era machines in the factory, which we discontinued in 1896, not because of any action of the United Company, but because it was a prison factory and the law
184 was changed. We owned both of those machines outright. We also used the Davey machine, which we transferred to a corporation in which we are interested. We have continued to use the Davey machine in that factory because that is all pegged shoes. We use the Davey machine from preference. We could have used the Varney if we wanted to. We preferred to use the Davey. It is a better machine. That is a reason that appeals to every shoe manufacturer. It is true that a better machine will drive out an inferior machine, and the Davey has driven out the others because it is a better machine. That reason, because it is a better machine, along with the exclusive use clause in the lease, is the reason why the Davey machine is the only machine on the market. Whether we would have used an inferior machine when we could get the best one, whether we had the exclusive use clause in the lease or not, is a difficult question to answer. It would depend upon the condition and circumstances. We gave up the Varney and New Era machines before the exclusive use clause was put into the lease and adopted the Davey machine because it was the best one, and have kept it for that very reason. The exclusive use provision in the lease has occurred to me as a reason for using the Davey machine before this minute. I could not say on what date. In answer to the question "Do you know of a better machine than the Davey on the market?" I could not use a better machine than the Davey. I do not know of any better machine. I am using the Davey machine because it is the better machine and because we can't use any other. We are using it because it is the best machine as between the Varney and the New Era. I know of no better machine on the market now than the Davey. None that I care to use.

185 We used the Goodyear, Eppler, and Bertrand welters and stitchers. We tried the Bertrand for less than a year, along about 1894 or 1895. We gave it up because the inseamer was an inferior machine. We tried the Eppler about the same length of time at about the same time, and gave it up also before 1896. We had the Goodyear at the time, and retained it. We gave up the Epplers because we were sewing razor toes at that time and the Eppler would not sew the razor toes as well as the Goodyear. We never reinstated the Eppler between 1896 and 1899, and have never applied for one since 1896. We have

seventeen Goodyear machines that we obtained before 1899 on the Goodyear Company leases. The rest of our 40 machines we have taken since 1899. The Eppler machine would not sew the razor toe as tightly as the Goodyear machine would sew it. When I said that I had noticed no difference between the old stitchers and welters and the modern stitchers and welters, I was comparing the old ones with those put out earlier than 1907. We have none of the latest models. There was a difference in the machines mechanically, but I noticed no difference in the output or the quality of the work. Ours is an open shop, and the output of our machines is not limited by the union. The possible output of the machine in 1896 was in excess of
186 three hundred pairs a day. The machines with which I was comparing the work done by the machines which we were using in 1896 are five or six years old or possibly older.

Shoes are now higher than they were in 1896, although we sell a shoe of better style for the same price. Our machines are now doing as good work on the higher grade of shoe as they were doing on the grade we made in 1896.

I did not seriously consider taking the Haverhill welter because of the provisions in the leases that I had of the Goodyear Company requiring us to use Goodyear machines exclusively. I first considered the matter in 1911, and looked at their machines, though I didn't negotiate with any of their people nor make any offer to take one. I am familiar with my leases. I have examined them a number of times. I may have looked at them frequently during the last two years. I don't remember whether I looked at them at the time of my visit to Haverhill. I did not negotiate for the Haverhill machine because of the provisions in the Goodyear leases requiring me to use their machines exclusively. That is the only reason. I wanted to install the Haverhill welters in one of our Chicago factories. When I speak of the Goodyear leases I mean the leases of Goodyear machinery made by the United Company. I have studied the Goodyear department "full set" leases issued by that company. I have not referred to the old leases made by the Goodyear Shoe Machinery Company before the formation of the United Company and can not now say how the provisions of those leases affect the installation of other machinery. I have brought with me an old lease which I had before 1899. I have not brought with me any lease of the welter and stitcher dated subsequent to 1899. Mr. Gregg telegraphed me to come here. He didn't ask for any papers. I brought those that I considered important.

We used the Hartford, Smith, and the Ross sole rounders in our factory. When the Ross came out, somewhere in the '90s, we discontinued the Hartford, which we had used since
187 about 1882, and took up the Ross machine instead. We used the Smith in the late '80s or early '90s for four or five years. Then we gave it up for the Ross. We never used the Loewer. From 1895 to 1899 we used the Ross machine exclusively, as the most economical machine for our kind of work. I do not know whether the Smith machine was on the market just prior to February 7, 1899. I think the Hartford was, though I have no personal knowledge. We own our Ross machine outright and have continued to use it since 1899. We bought another one from the United Company—the Ross-Moyer Manufacturing Company. We used all three of the heeling machines which I mentioned and are using them to-day. We have obtained McKay and American machines since, and are using them side by side. We bought one National in the '80s and are still using it. We have tried to obtain National machines at second hand, but have been unsuccessful. We have not tried to get any from the company. We use the American machine for welt shoes and the Mayo and National machines on McKay shoes. We use the National machines because we own them, the Mayo because the company puts it out as the machine for McKay work, and the American because the company puts it out as the machine adapted for welt work. The Mayo is a later machine than the others. I think we began using it about 1893 or 1894. We can still get the American. It does good work on welt shoes. I do not know what ones of the various tacking machines which I mentioned were still going in 1899. We have used all of them at different places, but decided that the staple tacker and the taper nail machine which we got from the United Company were the best machines. They are supplied by the United Company in any quantity we want.

I did not make the suggestion, either personally or through others, during the negotiations with Mr. Winslow, that large users of machinery ought to get better rates of royalty than small ones. The first discussion of which I knew anything was in September, 1910. On or about September 22nd, Mr.
188 Johnson, Mr. Florsheim, and the other gentlemen who later formed the Shoe Manufacturers' Alliance went and looked at Mr. Plant's machines. Mr. Jones was not present. The inspection of Mr. Plant's factory took place before the Alliance was formed. The same group of men have also interested themselves in the Boylston Company. I was present in

Washington at a tariff hearing within the last two years. I visited the Attorney General's office on shoe machinery business, about a year ago last winter with Mr. Johnson, Mr. Florsheim, Mr. Jones, and some other gentlemen. We did not see the Attorney General, Mr. Fowler, or Mr. Gregg. The Attorney General wasn't in. I was not present at any conference with Mr. Winslow in Boston in Spetember, 1910. I took part in the conference with Mr. Winslow in St. Louis, in February, 1911. It lasted all day. Mr. Johnson and the same other gentlemen were there. I did not make any statement that large users of shoe machinery should in some way obtain better terms than small users. I made no statement myself at the meeting in May, 1911. The same group of gentlemen were present. The alliance was then organized, and Mr. Johnson was its president. I believe some written statement was given to some one of those present by Mr. Winslow. We studied the paper, and tried to find out what it meant. It was not left with us, and I have not seen it since that day. It was at the meeting in May that Mr. Winslow said that the removal of the tying clauses would spoil the system of doing business which the United Company now employs and could not be made. Mr. Winslow made certain statements besides the written memorandum. There was some talking back and forth. I can not say whether the paper which you hand me is a copy of the memorandum which Mr. Winslow presented on that day or not. I remember one of those present told Mr. Winslow that we desired to show his memorandum to our counsel, Mr. Brandeis, and that a penciled memorandum was handed to some one. I left before the others did.

189 I do not believe I ever saw the paper that you hand me.

I saw one rack of men's shoes in Mr. Plant's factory when we visited it, but the product was almost entirely women's shoes. I never saw the machinery used on men's shoes.

Q. In the half day that you examined it did you give any attention to the size or the strength of the machinery as to whether it was suitable for making men's shoes or not?

A. We raised that question with Mr. Plant; yes.

Q. You raised the question?

A. Yes.

Q. As to whether it was strong enough?

A. Yes.

Q. I suppose he told you it was?

A. Yes.

Q. Did you question it?

A. Well, we naturally did, because it was used on women's shoes.

Q. You had never seen that machinery used for making men's shoes at all before or since, have you?

A. No, sir.

Q. How much money had you raised before you learned Mr. Plant had sold his——

A. I think the amount of the subscription was a million and one hundred thousand dollars.

Q. No. I say, how much money had you raised?

A. By raised you mean subscribed, or actual——

Q. How much had you raised—any?

A. Hadn't raised any.

Q. Hadn't raised a copper?

A. It had been subscribed.

Q. You mean in writing?

A. I don't know.

Q. Subscribe means to write your name under some proposition. You mean anybody had put down in writing his agreement to put up any money?

A. The different members had agreed to put up——

Q. Had you subscribed in the sense of agreeing in writing to put up any money?

A. I didn't sign; no; but I had agreed verbally.

Q. How much had you put up?

A. My recollection is that our share was——

Q. Just a moment, please. I say, how much had you put up; had you put up a copper?

A. Hadn't put up anything.

Q. Nor nobody else had?

A. No, sir.

190 I bought my Boston lasting machines prior to 1899 under leases which provided for a royalty of a quarter of a cent per pair but further provided that if a royalty of a half a cent a pair was paid the additional quarter of a cent might go toward the purchase of the machines. We had five or six of those machines under such leases. We were still paying royalty when we ceased to use the machine twelve or fifteen years ago. We put them in storage when we ceased to use them. The leases are still outstanding but we stopped paying royalty when we ceased to use the machines. I have one of the leases here. It does not contain the provision relative to the purchase of the machines of which I speak.

(A lease between the Boston Lasting Machine Company and the Selz, Schwab & Company, dated April 15, 1889, is marked "Plaintiff's Exhibit 148.")

Q. Other than that method, supported or not as it may be by the paper you produce, was there any other system of selling the Boston lasting machine that you know of?

A. No, sir.

Direct examination resumed:

I have brought with me leases covering machines obtained by me before the creation of the United Company. They
191 include eight leases from the Goodyear Shoe Machinery Company. When I said that I had leases from the United Company that prevented my leasing a Haverhill welting machine, I referred to the form of lease which we executed in April, 1905, containing the so-called tying clause. The lease which I present covers the Goodyear rounding and channeling machine.

(Lease between the United Company and Selz, Schwab & Company, dated April 4, 1905, is marked "Plaintiff's Exhibit 149.")

I did not sign an agreement to contribute to the plant purchase, but I stated verbally that I would put up three hundred and fifty or four hundred thousand dollars. I made that agreement the evening of the meeting of which I have spoken. The Chase machine is better on welt work than the Consolidated, but we have used the Consolidated machine on welt work in our Chicago factory in connection with the Rex pulling-over machine; in fact, that was the only machine that could be used in connection with the Rex puller over. The Consolidated machine is cheaper on McKay work than the Chase, although the Chase will do that work as well as the Consolidated. Our company acquired its interest in the Boylston Manufacturing Company within the last six months.

Q. And why was that, Mr. Selz, that you acquired an interest in the Bolyston Company?

A. If these leases are declared invalid we want to have a competitive shoe machinery in the market.

Q. Is that the purpose of the organization?

A. Yes, sir.

All the gentlemen who were associated in the Shoe Manufacturers' Alliance are interested, as shareholders, in the Boylston Machinery Company.

Cross-examination resumed:

Q. Mr. Selz, how large an interest have you in the Boylston Manufacturing Company?

A. I think up to date we have paid in somewhere between twenty-five and thirty thousand dollars.

Q. So you have that amount at stake upon these machinery leases being declared invalid?

192 A. If you choose to look at it that way.

Q. If they are not, you stand to lose that money?

A. Yes, sir.

Q. If they are, you stand to make it?

A. Yes.

193 JUNE 3, 1913.

MILTON S. FLORSHEIM, witness for the United States.

My name is Milton S. Florsheim. I live in Chicago, Ill. I am a shoe manufacturer. I have been in business since the fall of 1892. I manufacture the better quality of men's shoes. My factory has a capacity of about four thousand pairs of shoes a day. We use about nine Goodyear welters and about forty lasting machines. I am president of the company. I was president of our company in 1899, when the United Company was formed, and had supervision at that time of the shoe manufacturing. We had a small business then. I didn't help install the machines personally but I bought or contracted for the machinery—most of it—and was always consulted about whether any should be installed.

In 1899 we were using three Copeland rapid lasters which we owned outright. We paid five hundred dollars apiece for them. We got them from the Goodyear Shoe Machinery Company several years prior to the formation of the United Company. The Goodyear Company was still putting out lasting machines at the time of the formation of the United Company. We also had a number of Chase lasting machines which I obtained from the Chase Lasting Machine Company on a royalty.

Q. What was the difference between the Copeland machine and the Chase machine?

A. Well, they were somewhat different, but they did the same class of work. When the shoe was done you couldn't tell on what machine it was lasted.

Q. Were you manufacturing at that time, in 1899, the same kind of shoes that you are now manufacturing?

A. Practically so; yes.

Q. Did you last those shoes on both the Chase and the Copeland?

A. Yes, sir; we did it then and we did it for some ten years afterwards.

Q. Was there any difference in the machines so far as the quality of the work was concerned?

A. Not that we ever could see.

Q. Was there any difference so far as the rapidity of the work was concerned?

A. Well, I don't think there was any material difference. There may have been a slight advantage for the Copeland. It may have been a little faster than the Chase.

We have never made anything but welt shoes.

In 1899 I was using Goodyear inseamers and stitchers, and I had just commenced to install and had one line of Eppler machines—an inseamer, a stitcher, and a rounder. As to whether I used both of those machines in welting the shoes I was manufacturing—yes; I used the Eppler only to a very slight extent. I was merely trying them out. About a year after the formation of the United Company I traded them with Mr. Wil-
194 son, general manager or assistant general manager of the United Company.

Some time after the United Company was formed and when they were still charging an initial payment for their Goodyear machines, I think within one or two years, I talked with Mr. Wilson in Boston. I came to an understanding with him regarding the Eppler machines which afterwards was carried out by the United Company. I went there for the purpose of getting more Eppler machines, and Mr. Wilson refused to give them to me; said they were not going to put out any more Eppler machines. At that time I desired to trade in my Goodyear machines, on which I was paying four cents a pair royalty, for Eppler machines, for which, under my understanding with the Eppler Company, I would have had to pay only three cents a pair. Mr. Wilson wouldn't make the trade. I traded in the Eppler machines for Goodyear machines, receiving an equivalent in trade of from eighteen hundred to twenty-one hundred dollars. I know that I got a Goodyear inseamer and a Goodyear stitcher and rounder, and I think there were some other machines included in the trade. That included all the Eppler machines I had. I was trying out one set. I had used them very little. I think I executed leases under their new form for the machines which I received in trade. I ran my Chase lasting machines for about ten years after the United Company was formed. In 1911 I traded them in for the Number Five machine. I traded them in because the Number Five, I believe, does better work than the old Chase did. It does it a little more rapidly. A Number Five will last about ten per cent more shoes a day. I still have the Copeland machines in my factory. I pay no royalty on them. I paid $500 apiece for them, I believe.

I have no welting or stitching machines in my factory which have not been obtained from the United Company or its prede-

cessor, the Goodyear Shoe Machinery Company. All my lasting machines have been obtained from the predecessor of the United Company as far as the Copeland lasters are concerned or from the United Company as far as the Chase or Number Five lasting machines are concerned. My heeling machines are now all on United Company leases, I think. One or two of them
195 may be on old leases of a company called the American Heeling Company, or something like that, but we pay the royalties to the United Company. I own some machinery outright.

In regard to companies other than the United Shoe Machinery Company offering welting machines now I understand that the Haverhill Shoe Machinery Company offers an inseaming machine. A Mr. Kibbey, representing the Union Lock Stitch Company, has offered me an outsole stitching machine. The Krentler lasting machine is the only one of which I have heard outside of those made by the United Company. They are making one and I know of none others except Mr. Copeland has a machine there, but I have never seen any of them offered because he has only one or two. I know of no companies other than the United Company which are making and putting upon the market either for sale or lease heeling machines. Certain members of the alliance about which there has been testimony offered here undertook to equip a factory with independent machinery. I was a subscriber to that company, an officer and a director. Some of the machinery was obtained in this country—not all of it. Mr. McElroy had general supervision of that factory. I don't think I ever had a talk with Mr. Winslow in regard to shoe machinery business prior to the time of the Plant acquisition.

I was interested in the negotiations by the members of the Shoe Manufacturers' Alliance for the Plant purchase and was one of the persons present when they undertook to raise money to consummate that purchase. I agreed to take an interest to the extent of two hundred and fifty thousand dollars. The negotiations lasted several days. We went through the plant and observed the working of the machinery. I thought his machinery was doing a good class of work. He showed us a line of machinery which would make Goodyear welt and McKay sewed shoes. I understood that it was all embraced in the offer. Mr. Plant offered to sell us a half interest for one million six hundred thousand dollars. That offer was made
196 between seven and nine at night. It wasn't much later than that anyway. An effort was made among us then and there to raise that amount of money. We didn't raise the entire amount among ourselves. We raised one million one hun-

dred thousand dollars. The gentlemen present stated that the remainder of the money would be raised by the following day, or they thought it would be. They wanted to think it over and some of them wanted to submit it to their directors at home. That was said to Mr. Plant. He was present during this general discussion when the money was being raised. Before we learned that Mr. Plant had sold his factory and machines and rights to manufacture the machines to the United Company, Messrs. Campbell and Wade of St. Louis had agreed to finance the matter. They said, "If you think it is a good thing, go ahead and buy it and we will finance it." That was said between nine and ten o'clock on the morning after our conversation with Mr. Plant. About ten thirty or eleven o'clock in the morning we heard that the trade had been made with Mr. Plant.

I had a conversation with Mr. Winslow when I was in Boston on that trip. Mr. Winslow, Mr. Wilson, Mr. Jackson Johnson, and I were present. There was a general conversation.

Q. State what was said to him, and his reply.

A. Well, I can give you the substance of the statement. Mr. Jackson Johnson did the talking with Mr. Winslow and Mr. Wilson, and I said very little, if anything.

Q. State what it was.

A. Mr. Johnson told him that we were dissatisfied with the tying clauses and exclusive use clauses of the leases, and discussed with him the reasons for his buying the Plant machinery, and Mr. Johnson stated that it showed either that somebody was able to make a superior line of shoe machinery to what the United had, or else they wanted to retain an absolute monopoly of the shoe machinery business, and the conversation drifted along those lines, and Mr. Winslow stated that he understood that there was some dissatisfaction, but he had not realized what magnitude it was; that he had not been West for a great many years, and he volunteered and said we should let the matter rest and in the near future he would come out West and discuss the matter with us.

Q. Well, did he come out West?

A. He came out West.

Following that conversation, he did come out to St. Louis. I was present when there was a conference with him there. Mr. Johnson there submitted to him a proposition in writing.

197 Q. Please just state what Mr. Winslow said, leaving out what was in the written paper that was given to him by Mr. Jackson Johnson.

A. Well, he said that he didn't think the shoe manufacturers had any grievance. This is the substance of it: That he was

charging us all alike; that we added to the price of our shoes, and the consumer paid it.

Mr. CHOATE. What is the last, please?

The WITNESS. He treated us all alike, and we all paid the same price, and we added to the cost of our shoes, and the consumer paid it; and, if the royalty was lower, why, we would sell our shoes for that much less, and there wouldn't be anything gained by the shoe manufacturer.

Q. Did he say anything in that conversation about going into the shoe manufacturing business himself?

A. No, sir; he intimated that he could go——

Mr. CHOATE. Wait a moment. What he said, please.

A. (continued). No, sir; he didn't say he was going into the shoe manufacturing business.

He suggested that there be a subsequent meeting in Boston. There was such a meeting in May, 1911. At the meeting he made us no proposition that I know of. I afterwards heard that he handed us one on the following day. He said in the course of that discussion that he had given the matter a great deal of consideration, but he did not see how he could make any changes in the leases, and give us as favorable a price, a consideration, as we were receiving.

Cross-examination:

There were present at this conference in May, Mr. Selz, of Selz, Schwab & Company; Mr. Jackson Johnson, of St. Louis; Mr. Rand, Mr. Jackson Johnson's partner; Mr. Peters (the Peters Company and Roberts, Johnson & Rand are now combined under the name of the International Shoe Company); Mr. Reed, of Rochester, of E. P. Reed Shoe Company; Mr. Selby, of the Selby Shoe Company, Portsmouth; Mr. A. D. Brown, of the Hamilton-Brown Shoe Company of St. Louis; and Mr. George Brown, of the Brown Shoe Company of St. Louis. There was some one from Cincinnati. They were all of them members of the Shoe Manufacturers' Alliance at that time. Mr. Rand was the secretary of the alliance. I understood that the communication which was given out by Mr. Winslow the next day was given to Mr. Rand. I have never seen it. Mr. Rand has told me about it, but did not show me the paper. It was never discussed at any meeting of the alliance that I know of. It may have been discussed at some meeting. So far as I know, no reply to it has ever been made to Mr. Winslow. We have not met Mr. Winslow as a body since that last meeting in May. The substance

198 of Mr. Winslow's talk was that he had given considerable thought to the matter and he did not see how he could make any changes in the leases and at the same time give us as

favorable prices for the machines as he was then giving. We were then getting our machines on the royalty basis without paying any initial premium for them. There had been a time before the United Company was formed, and after, too, when we had to pay an initial premium for most of the royalty machines which we took. The requirement of an initial premium was a general trade policy of machinery companies; before the formation of the United Company and for a time after the United Company was formed that general policy was continued. Then the United Company gave us an alternative of taking machines under an initial payment or without an initial payment.

Q. And you elected to take them without an initial premium payment, most of your machines?

A. Because there wasn't any difference.

Q. That we will deal with later; I am only dealing with this part of it now. You elected to take them without an initial premium?

A. Most of them; yes.

I was not required to pay any larger royalty than I had paid before the United Company was formed. Mr. Winslow did not specify to what particular situation he was referring when he made the statement that he could not change his leases and give us as favorable terms as he was then giving. We have some machines in our factory which have not been acquired from the United Company, and we own outright some machines bought from that company, some of their nonessential machines, their general department machines. I can not say how many.

Q. You say you were present at the Touraine with Mr. Winslow, Mr. Wilson and Mr. Jackson Johnson the day after or the day you heard that Plant had sold his machinery?

A. I think it was the day after, about 2.30 in the afternoon.

Q. Did Mr. Johnson state to Mr. Winslow that he would like, or he and his associates would like, to furnish the money to pay for the Plant purchase, or something in substance to that effect?

A. I don't remember it.

Q. Now just search your memory a little.

A. I have. I tried to search it before I answered because I wanted to be quite sure of it.

Q. Was anything to that effect suggested during the conversation?

A. If it was, I don't remember it.

Q. Did anybody at that conversation suggest that Mr. Johnson and yourself and your associates be permitted to furnish the money to Purchase the Plant machinery?

A. I don't think so.

199 Q. Will you deny it?
A. I can't deny a thing I don't know about. I can't affirm it or deny it.
Q. Then you don't know for sure that it wasn't said?
A. Of course I don't. If I don't know it was said, I don't know that it wasn't said.
Q. Was anything said at that time about Mr. Jackson Johnson and yourself or any of your associates taking some stock of the United Shoe Machinery Company?
A. I don't think there was.
Q. Will you swear that it was not?
A. No; I won't swear it was or it was not.
Q. Was anything said about Mr. Jackson Johnson and yourself and your asosciates taking stock of the United Shoe Machinery Company at par to an amount sufficient to pay for the purchase of the Plant machines?
A. I don't think there was. I don't believe we ever knew what they paid for the Plant machinery, and we couldn't have made any such proposition.
Q. I am not asking you to argue it. Was anything said at that time about Mr. Johnson and yourself and your associates taking stock of the United Shoe Machinery Company at par in any amount or for any purpose?
A. If there was, I have forgotten; I don't remember it.
Q. Do you say that nothing of that sort happened, that nothing of that sort was said?
A. I didn't say that; no.
Q. You don't deny it, then?
A. I can't deny a thing I don't remember.
Q. All right. Isn't it a fact that Mr. Jackson Johnson for himself and you and your associates asked Mr. Winslow if he would not permit you gentlemen to furnish the money necessary to buy the Plant machines and to take stock of the United Shoe Machinery Company at par for it?
A. I don't remember.
Q. Do you deny it?
A. I can't deny a thing I don't remember, Mr. Choate.
Q. Didn't you make the proposition yourself, sir?
A. I don't think I did.
Q. Do you deny it?
A. I can't deny a thing I don't remember anything about.
Q. Do you mean to say you can't state positively one way or the other whether you made that statement, that proposition?
A. Yes, sir, I can. I don't remember of ever having made it.

Q. Or anything of the kind?
A. Or anything about it.
Q. Were not you or Mr. Johnson asking at that time that you gentlemen, shoe manufacturers from St. Louis, should be given some special consideration in the terms charged for your machinery, because of the large amount you took?
A. Absolutely not; no.
Q. Nothing of that kind discussed?
200 A. [illegible]hing that I remember of; no.
Q. Do you deny that you did ask for lower terms?
A. How can I deny a thing, Mr. Choate, that I don't remember ever having been mentioned.
Q. That isn't what I am asking you. When I ask you if anything of the kind was said you say you don't remember.
A. I don't remember; no, sir.
Q. And then I ask you if you deny it was said and you say you don't know.
A. No, I don't. I mean to say I can't deny it because I don't remember anything of the kind being said.
I have never suggested that it would be proper for the United Company to give us better terms because of the large amounts of shoe machinery we used. I have never heard such a suggestion mentioned. Mr. Johnson and I stated to Mr. Winslow that we were a committee representing the group of manufacturers who were then in Boston. I remember no conversation whatever with reference to stock of the United Company. On the evening of our meeting to consider raising money in reply to Mr. Plant's proposition, one million one hundred thousand had been subscribed before Mr. Plant left us. I think Mr. Plant told us that his offer had to be accepted right away; that he needed the money. We had not raised all the money when he left. We hadn't raised money enough to meet his proposition and he knew it. Mr. Campbell was present at the meeting that evening, but Mr. Wade was not present. I did not hear Mr. Campbell say anything about financing the proposition. On the next morning Mr. Wade said that he and Mr. Campbell would see that the money was furnished to finance the purchase, if we thought it was a good proposition.
Cross-examination resumed:
In the early part of my direct examination I spoke of three
Copeland rapid lasting machines. I did not say that I
201 purchased them. I know I own them. I said I paid $500
apiece for them and I paid no royalties. There were only three. The lease for three lasting machines which you produce bears my signature. This is the lease which was signed, as far as

I can remember, for those machines. I presume the machines are the three to which I referred.

(This lease No. L 149, dated Jan. 7, 1897, together with request for termination bearing the same date, is marked "Defendants' Exhibit 33.")

The second paper which you hand me bears my signature. In the paper I first looked at and identified as covering those three machines, the machines were numbered 51, 55, and 56. The second paper which you hand me relates to three rapid power machines numbered 51, 55, and 56. It is dated June 2, 1894, and apparently refers to the same machines. The first two of the three papers attached to the second paper seem to have been signed by me. I do not know who signed the third. I did not. The first of these papers attached is an application to take a lease of Copeland rapid laster No. 55; the second, an application to take a lease of Copeland rapid laster No. 56, and the third an application to take a lease of machine No. 51; and I received those three machines.

(This lease No. 124, dated June 2, 1894, together with acceptance, dated July 2, 1894, is marked "Defendants' Exhibit 34."

The lease last mentioned provides for the return of the machines on the expiration of the lease. Technically I was in error in saying I owned the Copeland rapid laster machines.

Q. I don't care about technical or practical. The rights that you got in those machines are the rights indicated by those two papers?

A. Mr. Choate, in deference to myself, I have not seen these papers since 1894, and, of course, I had no copy of them. I tried to find a copy of them; and, for all purposes, these machines belong to me, but it is true that there is a condition in the lease which I had not thought of.

Q. You mean a condition in the lease that when the lease expired they should be returned to the owner?

A. No; I don't think the second one. When I bought the——

Q. Please answer my questions.

BROWN, J. I think he should be allowed to explain.

202 Q. Go ahead, then.

A. In the first instance, we signed a certain lease with the Goodyear Machine Company, judging from these papers, in 1894. Then, subsequently, we negotiated with Mr. Hunter and obtained the right by paying a certain sum more than what we paid before, I believe, to use these machines in any way we pleased—and I was under the impression that we owned them, and for all practical purposes we did own them; but it is true there was a condition.

Mr. CHOATE. Does your honor think that this is competent?

BROWN, J. You refer to something later than those documents?

The WITNESS. No, sir. I am referring to these two documents.

BROWN, J. If that is all you referred to, of course the explanation is immaterial.

Q. As to that latter statement—for all practical purposes you owned them—the second paper you have just spoken of, dated the seventh day of January, 1897, in substance provided for an additional payment of $100 per machine as a final payment of rental on those machines until the expiration of the lease?

A. And the ownership if I complied with the conditions of the lease. I had a perfect right to do what I pleased with them, except that I didn't get the title.

Q. Suppose you show me in the lease any such provision as that.

A. I don't know as I can. These leases are very technical, and I am a shoe manufacturer and not a lawyer, and I can't say positively that there are not some conditions that will control it. I don't pretend to be able to dissect a lease intelligently or correctly.

Q. I am not intending to debate with you about that, sir. I am only calling to your attention the fact that I think you were in error about a statement you made yesterday.

A. I am perfectly frank to tell you that technically I am in error, but for all practical purposes I don't think I have made any mistake or misstatement.

Q. At all events, all your rights as to those machines are embodied in those two papers?

A. That is what they usually are. Anything we do—they are embodied in the papers.

Two or three weeks ago I signed the paper which you produce
dated April 23, 1910. I read it before I signed it; was
203 familiar with its contents and assume I thoroughly understood it then. It appars from the schedule of machines leased to me that the rapid lasting machines in question are included.

(Agreement between United Shoe Machinery Company and Florsheim Shoe Company, dated April 23, 1910, is introduced and marked "Defendants' Exhibit 35.")

I wrote the letter which you produce—

(Letter from Milton S. Florsheim to the United Company, dated April 30, 1913, is marked "Defendants' Exhibit 36")—and I think the paper which you produce is a copy of the paper which I sent to the United Company.

(Copy of agreement between the United Company and Florsheim Shoe Company, dated April 23, 1908, is marked "Defendants' Exhibit 37")—

It refers to lease and license L 149. ("Defendants' Exhibit 33.")

I know of no heeling machine on the market except that put out by the United Company. I was a stockholder and director of the Non-Royalty Shoe Company. I know nothing about its machinery equipment except what I have heard talked about. I heard the other day that there was to be a sale of its machinery. I have not seen the circular issued by Mr. McElroy, the president. I know nothing at all about the Non-Royalty factory personally.

I have never seen the circular you show me or the letter paper of the company.

I have heard of the Haverhill heeler. I don't know whether the Non-Royalty shoe factory was equipped with a Haverhill heeler. I don't know a thing about it. I never was in the factory. I never went to a directors' meeting nor saw a report of the Non-Royalty Company. I never heard the Haverhill heeler discussed, that there was one.

I have heard the name of the Universal Loose Nailer mentioned. I do not know that it is a metallic machine. It is not on the market to my knowledge. My statement that there was no metallic fastening machine on the market except the United Company's was made on the best knowledge I have. I am not

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positive whether there is a machine known as the Universal Loose Nailer or whether the company making it makes other metallic machines. I don't know that it is not on the market. I can't say. I am pretty sure. I don't know absolutely that there are not other metallic machines besides those of the United Company. To my personal knowledge there are no leveling machines on the market except the United Company's. There may be experimental machines out. I do not know about the Standard rotary leveler. I don't know whether it was in our Non-Royalty factory at St. Louis. I can't deny that there is a Standard rotary leveler in the market and has been for years. I can't deny a thing I don't know. I have never heard of the Standard rotary lasting machine. It may have existed without my hearing it. I don't know that we had three of those machines in our Non-Royalty shoe factory at St. Louis. I understood that the Haverhill Shoe Machinery Company was offering a welter. I have heard the machine discussed by shoe manufacturers who apparently knew. That is practically all the information I have about it. Some say it is a good machine. Others that it is not. I have

talked with Mr. Fox but not about that machine. I met R. H. Long the other day. I had heard of him before. I have heard of the R. H. Long Machinery Company. Some people say he manufactures shoe machinery. Some say he don't. I do not know. I have not heard that he manufactures a welter. He was using a welter which was a free welter but whether he manufactured it or not I don't know. I said there was a stitcher put out by the Union Lock Stitch Company. I learned from the agent of the Union Lock Stitch Company that they have a stitcher. They have an agent in Chicago where my factory is.

I had some of my Chase lasting machines on the old form of lease before the United Company was formed. I substituted for all my Chase lasting machines the new number five, which I think is a better machine.

205 Before the United Company was formed we were making some welt shoes with the Goodyear welter and stitcher and had one Eppler welter and one stitcher on trial. I don't remember how long we kept them on trial. We may have signed a lease for them. I can't remember. I probably did whatever negotiating was done for the Eppler machines. I can't remember just how long we kept the Epplers. We wanted to find out whether for three cents a pair we could get as good a shoe as we could for four. They were being used by others and we wanted to try them. I can't say whether we executed any lease about the Eppler machines. I talked about the royalties with a man who is now in the employ of the United Company. The paper which you produce is an application to the Goodyear Shoe Machinery Company for welters, stitchers, and auxiliary machines. It was signed by my brother for Florsheim & Company. I think. It represents the transaction described by me in which I said I traded in our Eppler machines and took Goodyear machines.

(Lease between Goodyear Shoe Machinery Company and Florsheim & Company dated April 6, 1900, is marked "Defendants' Exhibit 38.")

We got the principal machines and with them ten or eleven auxiliary machines, on the latter of which we paid no royalty. I don't remember whether initial payments were then charged or not on the auxiliary machines. I signed the letter which you produce.

(Letter from Florsheim & Company to the Goodyear Company, dated June 27, 1899, is marked "Defendant's Exhibit 39." Defendants' Exhibits 38 and 39 were read by counsel to the court. Exhibit 39 as follows:

"GENTLEMEN: We have had more or less correspondence with you regarding the royalty on your company's machines. We have also had considerable difficulty in finding operators for these machines. If you will refer to previous correspondence, you will note that we have special arrangements with the Eppler Machinery Company, which entitle us to certain privileges. Now, we make this proposition in order to adjust the matter; if you will agree to trade us Goodyear machines for the Eppler that we now have, we will agree to sign all contracts and also to pay you four cents per pair royalty. When your Mr. Lewis was here, we spoke about the matter to him and he said he would advise us when he returned here.

We shall await your reply.

Yours, truly,

FLORSHEIM & COMPANY.")

206 Direct examination resumed:

The letter last read was written after I had talked with Mr. C. H. Wilson and he told me just what I have stated. I realized I had no alternative and I made the trade. The paper introduced with reference to the transfer of the machines was sent me in 1910 and I didn't sign it. About six or seven weeks ago, before the United distributed its bonus to those of us who had conformed to their conditions and leases, I got a letter from the United, I believe, or I may have written them asking them for the stock, I don't know which, and in response they called my attention that I had not executed this paper, and said that if I wished that stock I should execute that paper. After talking with my lawyer, to whom I took the paper, I signed it and got my stock from the company.

207 JUNE 4, 1913.

JACKSON JOHNSON, witness for the United States.

I live in St. Louis. I am president of the International Shoe Company. It has an output of about fifty thousand pairs a day.

I have no technical knowledge of machinery.

I was chairman or president of Shoe Manufacturers' Alliance and was in Boston when negotiations were had with Mr. Plant. I know Mr. Campbell and Mr. Wade, who were present on that occasion. They reside in St. Louis. They expressed a willingness to finance the deal if it was carried through. Mr. Campbell is president of the North American Company. He is reputed to be a rich man. Mr. Wade is president of the Mercantile Trust Company, a large trust company in St. Louis.

I presided at a meeting at which the shoe manufacturers presented to Mr. Winslow a written proposition of what they wanted him to do.

(The witness identifies a paper produced by Mr. Choate as, except for certain interlineations, a copy of the written proposition referred to. The paper is as follows:

"Lease premium leases are (should) to be written so as to (that each lease will) cover only the individual machine which is the subject of the lease and are (should) not to apply in any way to other machines or machinery which may be held by the lessee. Lessee are to (should) have the right to exchange existing leases for the type above referred to. Lessees shall (should not) be obligated in any way to use exclusively machines or machinery made, leased, or sold by the U. S. (United) Shoe Machinery Company. We recognize fully the great economic advantages possessed by you in the fact that you now enjoy practically a monopoly of the shoe machinery business, but we submit that your patrons should be permitted to share in those advantages by you so modifying your charges for the services rendered as to return only a fair amount on your capital invested."

It was marked "Plaintiff's Exhibit 154.")

208 Our company has an interest in the Boylston Manufacturing Company. It amounts to about $80,000. We went into it to protect our business by insuring the permanency of the supply of shoe machinery. The Boylston Company contemplates making a full line of shoe machines.

Cross-examination:

I have been in the shoe manufacturing business about twelve or thirteen years. I think I began after the United Company was formed. Before that we were jobbers selling shoes for other people. Our business first was conducted under the name of Roberts, Johnson & Rand Shoe Company. That company and the Peters Shoe Company sold out to the International Shoe Company. It has an authorized capital of $25,000,000. I am its president.

Mr. Peters, Mr. Rand, and I of our company were in the alliance. Our attempt to become interested in the Plant machines was my first effort to become interested in the business of manufacturing machinery. We put our money into the Boylston Manufacturing Company about six months ago. We haven't put it all in yet. We are just beginning. $80,000 is just a beginning. It is our hope to manufacture a complete line of shoe machinery. We hope to compete with the United Shoe Machinery Company. I haven't been after the United Shoe Machinery Company at all. I have never made complaint about them. I have never been to Washington with reference to the shoe machinery business. I have never been to the Attorney

General's office. I have been before several congressional committees, but nothing specially about United Shoe Machinery Company business. Have been there to talk about shoe machinery business incidentally, possibly. I have talked with members of Congress. I have very likely talked about the United Company to them with the ultimate object of trying to get legislation aimed at the United Shoe Machinery Company's method of doing business. I have discussed its method of doing business with the chairman of the committee on
209 patents. That was probably a year, probably two years, ago. I have been a member of the alliance since its organization.

The Shoe Manufacturers' Alliance has ceased. I was not a stockholder or director of the Non-Royalty Shoe Company. I may have invested a few thousands of dollars in it. I talked with Mr. Winslow at the Touraine subsequent to our failure to get an interest in Plant's machinery.

Q. Well, now, was there anything said by you, Mr. Johnson, or in your presence, with reference to you and your associates furnishing the money to pay for the Plant purchase?

A. I don't remember definitely.

Q. What is your best recollection about it?

A. I couldn't say that I have any definite recollection at all, Mr. Choate.

Q. Don't you recall that anything of that kind was discussed?

A. Well, I know we discussed it in general terms, but to say whether I told him that we had the money or what we were going to do, I couldn't——

Q. I don't mean that. Did you discuss with him the furnishing by you and your associates of the money to purchase Mr. Plant's properties?

A. I couldn't answer that.

Q. In substance, was it that?

A. I couldn't say that was mentioned at all.

Q. What was the general discussion?

A. Our general discussion was in reference to the leases and conditions imposed on the shoe manufacturers by the United Shoe Machinery Company.

Q. My question was with reference to the Plant properties. Those were discussed, weren't they?

A. I remember having brought the matter to Mr. Winslow's attention, as to the effect produced upon the minds of the shoe manufacturers through the purchase by the United Shoe Machinery Company of Plant's——

Q. Didn't you also bring up the question of you and your associates having some part in that purchase?

A. Just what was said about that I couldn't——

Q. I don't ask you in detail. I just want the substance or effect of it. Wasn't something of that sort discussed?

A. I should have to answer that I don't recollect.

Q. See if I can help you to remember about that. You inquired, didn't you, of Mr. Winslow how much money he had to pay to buy the Plant properties?

A. I don't know whether I did that or not.

Q. May have?

A. I possibly did; yes. I should rather imagine he didn't tell me.

Q. Coupled with that inquiry didn't you make the suggestion that you and your associates would like to furnish money and take stock in the United Company?

A. No.

Q. Do you say definitely that you didn't say that?

A. I didn't say that.

210 Q. How did you put it?

A. Will you allow me to explain as near as I can what occurred?

Q. Yes; if you will confine yourself to this subject.

A. I will try to confine myself to the subject discussed—the points that bear on my mind. I can't remember definitely.

Q. It is with reference to the Plant purchase that I want to direct your attention.

A. Yes. As I say, my connection with the conference was brought about through some of my associates among the shoe manufacturers that were here at that time.

Q. You went as a committee, I take it?

A. Yes. I was asked if I wouldn't meet Mr. Winslow in connection with some other member and discuss with him the situation. An arrangement was made—I don't know through whom—an arrangement was made and on the afternoon of the day following our conference with Mr. Plant we met at the Hotel Touraine and we discussed—in particular, I was trying to find out from Mr. Winslow what would be his attitude in the future, and especially in reference to the conditions of the leases—more especially as to the tying clauses and to the exclusive use clauses that the leases imposed. After discussing that matter quite at length and finding that, comparatively, I made no impression on Mr. Winslow—he didn't take any part in my views—that is, he differed wholly from my views—I suggested to Mr. Winslow—I said: "Mr. Winslow, the policy of our company has always been

to interest people in our stock. Why don't you let the shoe manufacturers buy enough of this stock to identify them with it—offer it to them in proportion to their"——

Q. Did you mean enough of the United Shoe Machinery Company's stock?

A. I was assuming that he was going to issue stock to pay for the plant——

Q. His own stock?

A. Yes. I asked him why he didn't offer it to the shoe manufacturers and interest them in it and thereby obviate the necessity of those clauses in the leases. I told him they were repugnant to every shoe manufacturer when he had to look at and sign them.

Q. You say you were assuming that he would issue stock to pay for the Plant purchase?

A. I was assuming that he would.

Q. And it was that stock that he was going to issue, in the United Shoe Machinery Company, that you suggested be offered to the shoe manufacturers?

A. Yes.

Q. What shoe manufacturers?

A. All of them.

Q. You among the number?

A. Sure.

211 Q. Have you stated all, sir?

A. Well, it is hard to state all in five minutes that occurred in three hours.

Q. Surely; but I mean on this particular topic have you stated it all?

A. That is about all I have any definite recollection of.

Q. See if I can help you about some of the details. Was the amount that would have to be issued for that purpose suggested or talked of at all?

A. Well, I suggested to him, I think, that when we were interesting our employees in our stock we usually did it at a less price than the market value.

Q. On what terms did you suggest he should issue United Shoe stock to you?

A. I don't remember.

Q. It was par, was it?

A. I don't remember.

Q. Did you tell him you usually issued your stock to your employees at par?

A. No; we never did that.

Q. At some price less than the market?

A. We always sold it less than the market.
Q. And you suggested that he do the same?
A. Sure.
Q. You won't say that you did not suggest par?
A. No.
Q. Although the stock was then selling at 50 on a par of 25?
A. I didn't know the market.
Q. You didn't?
A. I never owned any at that time.
Q. Didn't he tell you that the stock was then selling in the market at 50 or thereabouts?
A. Well, he turned it down so cold that we didn't discuss it very long.
Q. Didn't he tell you that the stock was then selling at about twice par?
A. I don't remember that.
Q. You won't say he didn't?
A. I won't say he didn't.
Q. How did this offer of stock to you at less than the market price have any connection with relaxation of the clauses in the leases?
A. My idea was that if he had all the shoe manufacturers in there it would not be necessary for them to put a clause of that kind in there.
Q. You mean if they were given some advantageous opportunity to get stock in the United Company they wouldn't object to the clauses in the leases?
A. No. I meant this, that he could afford to take them out because if they were stockholders and patronizing their own company they would do it as a matter of preference and not as being forced to.
Q. That is, if they were given a chance to take stock at better than the market price they would be perfectly willing to take the company's machines?
A. No; I didn't mean that.
212 Q. That was the argument you were using with him?
A. No.
Q. Just state it in your own way. How was that acquisition of stock by them at less than market price to operate?
A. Let me say here that I was just speaking my own mind. I was representing no one in that negotiation. I was not representing any other manufacturer.
Mr. CHOATE. I appreciate that, sir.
The WITNESS. I had failed so signally in my discussion with Mr. Winslow that I was rather trying to get something out of

him so that I could go back to the other manufacturers and tell them: "Here is something Mr. Winslow is willing to do."

Q. How was it going to work, this getting of stock at less than par, in connection with the leases, as you regarded it?

A. I regarded that if the manufacturers owned that he wouldn't have to tie them up so tight and fast and could eliminate those clauses that were repugnant to the manufacturers. It wouldn't be necessary.

Q. Why wouldn't it be necessary?

A. Because they would be partners in the institution.

Q. So that their strong inducement would be to use his machines?

A. He would patronize himself in preference to anyone else.

Q. That is, there would be a strong motive to use no machines except the United's if they were partners, all being stockholders?

A. It would be a strong motive for them to give preference to the company they were interested in.

Q. Is this the thing you wanted to get out of Mr. Winslow to carry back to the people you represented?

A. Not especially.

Q. One of the things?

A. I wanted to go back to the manufacturers and tell them Mr. Winslow was willing to do something.

Q. Are you quite sure that you wanted that privilege extended to all the shoe manufacturers?

A. Yes. I asked him especially ——

Q. Did you not suggest that it be offered upon such terms that only the large manufacturers could take it?

A. No, I didn't.

Q. Something to that effect?

A. Nothing to that effect whatever.

Q. All these people you represented were large manufacturers, weren't they?

A. No. Some of them were very small.

Mr. CHOATE. I haven't heard of anybody who manufactured less than 4,000 pairs a day.

PUTNAM, J. Get through this as soon as you can, Mr. Choate, please.

Mr. CHOATE. I will come directly to it.

213 Q. Isn't it a fact that you asked Mr. Winslow to make this proposition upon such terms that only you large manufacturers could get the benefit of it?

A. No, I didn't.

Q. You were perfectly willing if you got that accommodation on the stock to have all your machines of the United Company?

A. No, I wasn't. I didn't call it a contract at all. That was not a part of the suggestion.

Q. But you gave him to understand that that influence would operate with you just as it would with anybody else?

A. As I say, this discussion of the whole thing with reference to that was a matter of very short——

Q. Just answer my question. You have tried, haven't you, for quite a number of years, to impress upon him the idea that large manufacturers ought to get better terms than small ones?

A. No.

Q. You do think so, don't you?

A. No; I shouldn't say that——

Q. That is, a man whose output is 50,000 pairs a day, and who is paying a large sum in royalty and taking machines by wholesale, you think, don't you, ought to get better terms than a small manufacturer who only takes one or two machines?

PUTNAM, J. You have got aside from the conversations, haven't you?

Mr. CHOATE. Yes.

Q. That is your opinion, isn't it?

A. That I think that the large manufacturers should have a lower price on machinery than others?

Q. That he ought to get better terms than a man who takes a small amount.

A. I should say it would be destructive to his company if he entered into an arrangement of that sort.

Q. To the United Company?

A. Yes.

Q. But you think so from your point of view, don't you?

A. I could not say that I did.

Q. Haven't you so said, and didn't you so say on that very day?

A. I don't think I did.

Q. You won't deny it, will you, Mr. Johnson?

A. Why, no, I couldn't deny——

Q. You won't deny that you told him that you thought a large manufacturer ought to get better terms?

A. I should say this: I don't believe I said that; I don't think I said that.

Q. In substance or effect that that was the idea that you wanted to carry away to take back to your representatives?

A. No, I couldn't have done that, because I would have had to carry it to some very small manufacturers.

Q. You sought this interview, didn't you?
A. No, sir.
Q. And the person who was with you was Mr. Milton S. Florsheim?
A. Yes, sir.
Q. And he was present at all the time that this interview was taking place?
A. Yes, sir.

Direct examination resumed:

Q. Just one question. Do you remember whether or not Mr. Florsheim was immediately present when this conversation was had with Mr. Winslow in regard to the purchase of the Shoe Machinery stock?
A. I don't think he was; that is, I don't think he was in that part of the room.

214 JUNE 4, 1913.

FRANK C. RAND, witness for the United States.

I live in St. Louis and have been engaged in the shoe manufacturing business since 1903 or 1904. I am vice president of the International Shoe Company of which Mr. Jackson Johnson is president. I have been with that company since its organization two years ago. Previous to that I was vice president of the Roberts, Johnson & Rand Shoe Company, which had an output of 30,000 to 35,000 pairs of shoes per day, making all kinds of shoes. From 1904–8 I was superintendent of our factory making men's shoes. Among shoe manufacturers the expression "essential machines" has a special meaning; the term in a commercial way has a limitation as to the kind of machines. I understand that welting, stitching, rough rounding, heeling, and metallic fastening machines are embraced within the class of essential machines in the commercial sense. (This testimony in last two sentences subject to defendants' exception.) I do not know how many welting machines we have in our factory. Their average output is between three and four hundred pairs per day, if operated steadily and properly. Approximately half the shoes we make are welt shoes. We lease our welting, lasting, heeling, rough rounding, and metallic fastening machines from the United Shoe Machinery Company. The Roberts, Johnson & Rand Company did likewise.

I am familiar in a general trade sense with the Krentler lasting machine. I saw one in operation in the factory of the Non-Royalty Shoe Company at St. Louis. It does the same work as the lasting machine put out by the United Company. It did good work. The Krentler Company is located at Detroit, Mich.,

but has only put out two machines up to the present time, as I understand it.

The Naumkeag machine is used with a sandpaper pad to sand off the surface of the breast of the heel. We purchase emery pads for the Naumkeag machines from the United Company at three dollars per hundred. The machine cannot be used without them. Those pads wear out constantly. We cut some for ourselves at one time when we were out of pads at forty cents a hundred. We have been paying the United Company twenty-five dollars for leveling machine legs, but made a set of
215 legs for one of our machines at a cost of approximately six dollars for labor and material.

The figure does not include overhead charges. Ten per cent is sufficient for them. I have made a comparison of the machinery parts and repairs in our city factories as compared with our country factories. The machinists of the United Shoe Machinery Company do an extremely small percentage of the repairing in our country factories, as they are sometimes one hundred and fifty miles from the factory, and it would take too long. We do our own repairs there. They do practically all the repairing in the city factories, because they are easy to be called on. The parts about which I am testifying are not articles which can be obtained in the market generally, but must be bought from the United Shoe Machinery Company or made.

The cost per annum in all my factories for parts is approximately between $100,000 and $200,000. It is a very broad guess. In country factories we have our own machinists and machine shops to make repairs. They make parts in cases of necessity. Except in isolated cases, we buy the new parts used in country factories from the United Shoe Machinery Company. In our city factories we also have machinists, but the United Company has agents in the factory, and we call on them pretty freely. We only call on them in the country when we get into more trouble than we can get out of because of some breakdown. We also buy our repair parts that are used in our city factories from the United Company.

There is a difference of about fifty per cent in the cost of installing repair parts in country factories. The keeping up charges of our country factories are about one-half what they are in the city where agents of the United are constantly used. The price of the parts is the same, but greater care and economy are practiced by our own machinists and parts are successfully used a longer time.

I was in Boston at the time negotiations were had with regard to the Plant purchase.

216 I was present at a conference with Mr Winslow in Boston in May, 1911. Mr. Florsheim, Mr Selby, Mr Selz, Mr. Krippendorf, Mr. Johnson, Mr. Robley, of the Brown Shoe Company, and Mr. A. D. Brown were present at that time.

We met in Mr. Winslow's office the morning after the day on which we had gone with him to Beverly to look over the United Company's plant. After a talk on the development of the United Company by Mr. Winslow, the manufacturers present asked him what proposition he had worked out. This meeting was following one that had been held in St. Louis in February of the same year. He had worked out none. We asked for the notes from which he had spoken, but he said he would dislike to give them to us unless we would promise to return them by two o'clock that afternoon and not take any copies. We did not take them. We requested him to meet with most of those same gentlemen in the afternoon. He did come, with some of his associates, to the Hotel Touraine. We had a lengthy discussion of two or three hours, freer and more informal than in the morning. In the afternoon there was general discussion regarding objections as to the various leases. Mr. Winslow said that the matter had been under discussion among the officers of the United Company for quite a while, and that a plan might be worked out by which the entire group of machines, which were then considered as a single unit, should be separated into several units, thus giving the manufacturers the privilege to use any one or all or any part of the several units, the different units being separated one from the other. If this were done, he said, the manufacturers could not expect to get the separated units on as favorable basis as they now had their shoe machinery. I produce a copy of a letter from Mr. Winslow, dated June 19, 1911, stating what was to be a unit under the proposed new plan.

Two or three days after the others left I had two private conversations with Mr. Winslow, probably three or four hours each time, and he outlined the application of the plan, which
217 he said might possibly be worked out, to the machines belonging to the United Company operated by Roberts, Johnson & Rand Shoe Company, in which I was interested, as of February, 1911. We were operating over sixteen hundred machines of the United Company at that time, the initial cost of installation of which, under the regular form of lease on which they had been put out, would have been between ten and twelve thousand dollars. Under the suggested plan the aggregated initial cost of installation for those same machines would have been over two hundred and fifty thousand dollars. The royalty in both instances was to be the same. The difference in cost was

to pay for the privilege that was given us under those seven units. We could throw out any one of the units that we cared to. But the statement was made that if we didn't use all of the units we couldn't expect six of the units on the same basis that we used seven—some increased cost would have to be made in order to compensate in a measure for the idle unit.

After this conference the letters which I identified were written.

(Letter from Mr. Rand to United Shoe Machinery Company, dated June 14, 1911, is marked "Plaintiff's Exhibit 155." Letter from Mr. Winslow to Mr. Rand, dated June 29, 1911, in answer thereto, is marked "Plaintiff's Exhibit 156." These letters were read into the record.)

PLAINTIFF'S EXHIBIT 155.

ST. LOUIS, *June 14, 1911.*

UNITED SHOE MACHINERY CO., *Boston, Mass.*

Attention Mr. S. W. Winslow.

GENTLEMEN: In the personal conversation between you and the writer when I was last in Boston, I stated there was nothing more that we could do in Boston, but in a short while we would write you about any conclusion that might be reached.

The shoe manufacturers are contemplating another meeting very soon. To take up the matter intelligently, some additional information is necessary. The result of our meeting at Boston was that you submitted to us—

1st, a memorandum separating the entire system into seven independent units.

2nd, you submitted figures relating to the machines now in use by the Roberts, Johnson & Rand Shoe Company, which figures would apply if the machines were installed under your proposed plan.

Are we to consider that the memorandum (in connection with the figures tabulated under the terms of the memorandum) was a definite proposition from the United Shoe Machinery Company; if so, what change, if any, in present royalty was contemplated?

Kindly advise me regarding the above, and oblige,

Yours, truly,

F. C. RAND, *Secretary.*

218 PLAINTIFF'S EXHIBIT 156.

BOSTON, MASS., *June 19, 1911.*

Mr. F. C. RAND, *Sec'y Shoe Mfrs. Alliance, St. Louis, Mo.*

DEAR SIR: Replying to yours of the 14th inst. I note your reference to the fact that when in Boston you stated that in a

short while you would write me any conclusion which might have been reached, but that another meeting is contemplated very soon and that you desire further information.

You state that:

"The result of our meeting in Boston was that you submitted to us—1st, a memorandum separating the entire system into seven independent units."

In order that there may be no misunderstanding, I understand those to mean: 1st, Goodyear machines, including auxiliaries; 2nd, Rex pulling over system, including auxiliary machines; 3rd, lasting machines; 4th, metallic machines; 5th, heeling machines; 6th, clicking machines; general department machines.

In your letter you also state:

"2nd, you submitted figures relating to the machines now in use by the Roberts, Johnson & Rand Shoe Company, which figures would apply if the machines were installed under your proposed plan."

And you ask:

"Are we to consider that the memorandum (in connection with the figures tabulated under the terms of the memorandum) was a definite proposition from the United Shoe Machinery Company; if so, what change, if any, in present royalty was contemplated?"

In reply to your question I would say that no change in the present royalty was or is contemplated (excepting as explained to you in the substitute form of memorandum in reference to the Rex pulling over system and as stated therein). This was stated very fully to your committee while in Boston.

No definite proposal was made to Roberts, Johnson & Rand.

Should, however, the manufacturers who were present at the conference express their approval of the plan which was submitted, I think there should be no difficulty in our making equitable arrangements by which Roberts, Johnson & Rand, and such other manufacturers as may desire to have the company adopt the plan referred to, may rearrange their leases in accordance with the basis of the memorandum.

Yours, sincerely,

S. W. WINSLOW, *Pres.*

At a subsequent meeting of the Shoe Manufacturers' Alliance, I stated how this plan worked out as applied to our machines and they took no further interest in it.

Our company purchased an interest in the Boylston Manufacturing Company in order to safeguard our shoe business by developing another source of supply of shoe machinery and competition in that commodity. At present it is putting out some finishing machines and an ironing machine to smooth the upper

after the shoe is practically made which is profitable to them. I think a good many of them are being put out. It irons out the upper and prepares the shoe for being dressed and
219 put into its final condition. That machine has nothing to do with fastening the sole on the shoe at all.

Cross-examination:

The Boylston Shoe Machinery Company has been in existence for quite a number of years.

Our company and our associates bought the large interest in the Boylston Company formerly owned by Mr. Henry H. Rogers. He and his associates, particularly Mr. Copeland, had been in business manufacturing shoe machinery for about twelve years. Mr. Copeland is still connected with the business. Since we came into the business it has gone on without interruption except that the shoe machinery part has practically been defunct. I have no interest in it except our company's interest. The $80,000 invested in it by Mr. Johnson and me comes from the International Shoe Company. I am a director in the Boylston Company. It was our purpose in going into it to safeguard our business and to develop competition in shoe machinery—incidentally if the company should be successful and there is profit in it we should not object to that.

Q. You mean not only to put your money into it, but your ability and your intelligence to develop it?

A. Personally, I think not.

Q. Or to have it done, to have it developed?

A. Yes.

I have at home the memorandum which was submitted by Mr. Winslow and which is referred to in my letter to Mr. Winslow, plaintiff's Exhibit 155.

(Copy of memorandum given to Mr. Rand by Mr. Winslow and referred to in plaintiff's Exhibit 155 is identified by the witness and is marked "Defts' Exbt. 40." Copy of memorandum of initial payments given by Mr. Winslow to Mr. Rand and referred to in plft's. Exbt. 155 is identified by the witness and is marked "Defts' Exbt. 41.")

I think our company then had 1,635 machines from the United Company. I do not think over fifty per cent of our machines of all kinds, including the fitting room machinery, and measuring machines are from the United Company. Not over fifty per cent of all the machines used for making shoes in
220 our factory are obtained from the United Company.

I do not know what initial payments were demanded before the organization of the United Company. I have never compared the figures in defendants' Exhibit 41 with the initial

payment charged for similar machines before the formation of the United Company. I think we had machines from the general department; I don't know whether we bought them outright or leased them. Mr. Winslow's memorandum covered all the machines with which the United Company had supplied us and necessarily included general department machines. It included an initial payment on every single one of those machines in every one of the several departments into which our correspondence had suggested a division of the units. We never considered adopting the proposed form of lease for any one department. I had very little interest in the memorandum after seeing the immense cost. I don't recall whether I replied in any form to the memorandum. The figure of two hundred and fifty thousand dollars covered the installation of machinery in our twenty factories in two different States, Missouri and Illinois. That cost of installation was for a corporation with $25,000,000 capital and turning out 50,000 prs. shoes a day; and selling goods under open competition and desiring to buy under open competition. It involved the shipping of the machinery from Massachusetts and setting it up ready for operation.

The Naumkeag machine parts are not sold as an article of merchandise in the market. These discs are a part of the machine—they are a special article furnished only by the Naumkeag Company. I can't say whether they are patented. The leveling machine for which we made legs was a Giant leveler at our St. Charles factory. I don't know whether that is a general department machine that can be bought outright. I am not really very familiar with the terms upon which we can get machinery, although I sign all of our leases—practically all of them. I do not know whether the leg is a casting. I don't know from personal knowledge exactly what broke on that machine. Somebody told me that a leg had broken. I don't know how big a piece the leg of a Giant leveler is. The
221 machine stands about as high as the witness stand and the legs are about the same length as the posts of the witness stand. I don't know whether our mechanics made a wrought leg or whether it was cast. I recognize that there is a difference. I don't know whether he made one leg or four. I said set—I don't know how many in a set. I think those legs are not separated. Shoe machinery is complicated and composed of many different parts in many instances. Breaking a part may cripple the whole machine. We keep on hand a liberal supply of parts.

Q. They have got to keep all those parts ready without knowing whether they will ever be called for or not?

A. Yes.

Q. And just as many parts as there are parts in all the machines; isn't that true?

A. Yes; I should think so.

Those metallic fastening machines that attach the bottoms to the uppers are the ones which I include among "essential machines," viz, the loose nailer and the standard screw machine.

Q. It isn't quite whether you regard it as so, but it is whether the trade speaks of it so.

A. It is so regarded in the trade.

Q. It is whether the trade is in the habit of calling that machine an essential machine.

A. They are.

Q. Which one or ones?

A. Well, the loose nailer and standard screw—the loose nailer and standard screw machines come under that head.

Q. But not the other metallic machines?

A. I am not attempting to include them, because my specific knowledge of those machines is very limited.

Q. You mean as to the metallic machines?

A. Yes. My personal experience has been more largely with welts.

Q. Can you tell me how many machine operations there are on welt shoes in a well-organized factory like yours, for instance?

A. You mean after you begin to attach the upper to the bottom?

Q. How many machine operations there are in making a welt shoe from beginning to end?

A. I can't tell you.

Q. There are at least 150, aren't there?

A. I don't know. I could probably figure that out.

Q. I am not far out of the way in stating about 150, am I?

222 A. I think that would be excessive.

Q. When you have equipped your factory with machines for the making of a welt shoe, and adapted your business to making it by machinery, is there any machine that is more or less essential than another in making that shoe?

A. That question—I don't know how to answer that question.

Q. The fact is that after you have become accustomed to doing your business that way, they are all essential, commercially?

A. Yes; everything—leather and everything else which goes into a shoe, tacks and all, is an essential proposition in making a shoe.

Q. When you have got into the habit of making shoes by machinery, all the machines which go to make them are essential?

A. Not under the definition and by the limitation by which I have attempted to define the essential machines.

Q. I am not speaking of that subject now.

A. Oh, in the broader sense of the meaning of the word "essential," every component part is an essential part to a shoe.

The United Company furnishes parts for our country factories at the same price as for city factories. The United Company agents make a reasonable response to calls from country factories.

Q. And they charge you nothing for their services?

A. No.

Q. You are given free the services of their mechanics in both your country and city factories?

A. Yes.

Q. In keeping your machines in repair whenever you ask for them?

A. Well, there is a mental issue raised about the "free services." They don't charge us for the time they put in, but there is just the point.

Q. They don't charge you for their labor?

A. For their labor they don't charge.

Q. And they don't charge you for their car fares when they go one hundred miles into the country to your factory?

A. Those two specific things are not shown on the invoices.

Q. They are not charged for, are they?

A. No; they are not charged there or shown.

They teach our operatives without charge, and furnish them in times of strikes without charge, at our request. It was a mutual proposition—if we didn't run the machines we didn't get any shoes and they didn't get any royalty.

223 Direct examination resumed:

We have about as many machines for attaching bottoms to shoes as we have for fitting the uppers. I think I am not qualified to describe the difference in the machines leased from the United from those bought outright. We paid the United Company probably more than fifty thousand dollars per month for royalty, machinery parts, machinery rentals, and return charges.

224 JUNE 5, 1913.

WARREN F. MCELROY, witness for the United States.

I live in St. Louis and am engaged in the shoe manufacturing business, being connected with Burrough, Jones & Dyer Shoe

Company. They have two factories in St. Louis and one in Milwaukee. Before the first of this year I was president of the Non-Royalty Shoe Company, the stock of which was owned by members of the Shoe Manufacturers' Alliance. Its factory was in St. Louis. I was with that company for a little over a year. Previous to that I was vice president of the Hamilton-Brown Shoe Company. I was with that company almost twenty-eight years. From 1890 to 1911 I was superintendent of their manufacturing department, and as such supervised and directed the installation of their machines, for which I signed the leases. About 1890 they made about three thousand pairs of shoes, but when I left they were making about thirty-five thousand to forty thousand pairs daily, having gradually increased their capacity. They made a general line of shoes.

In February, 1899, we had two varieties of lasting machines in our factory, the Copeland-Rapid and the Sinning, of which we had eight. The Copeland machines were installed in the early nineties. We were making men's shoes on the Copeland and women's on the Sinning. From any knowledge I had the Copeland machine could not be used in making women's shoes. We never used the Copeland for women's shoes. We used the Sinning for making some men's McKay shoes. Never tried it on men's welts. The pegging device on the Sinning machine was not arranged to make welt shoes. It was a type of "nigger-head" machine, and with an adjustment probably could be used for that purpose. So far as I have any recollection those are the only two varieties of lasting machines I knew anything about along at that time. I think the Copeland machine was put out by the Goodyear Company. The Consolidated and McKay Company was not putting out a lasting machine to my knowledge.

225 There were the Goodyear and Eppler welt systems on the market at that time. I used only the Goodyear; I never used the Eppler. I examined the Eppler machine in 1897 or 1898 at Mr. Geo. E. Keith's factory at the solicitation of an agent of the Eppler Company. I went with Mr. Myron F. Keith and looked at the machine and the class of work it was doing. It seemed to be doing good work on men's medium and fine grade welt shoes. The work looked equally as good as the work done by the Goodyear machines in my factory.

Q. Do you know whether or not the Eppler welt could have been used on women's shoes?

A. I imagine it could.

Mr. CHOATE. Just a moment, please. Is that answer quite adequate as a response to your question?

Mr. FOWLER. Strike out the answer.

Q. Do you know whether or not it could be used on women's shoes?

A. I do not.

Q. Did you examine the machine carefully enough to determine whether or not it could be adjusted to women's shoes?

A. I would say that it could very easily.

Mr. CHOATE. That is not an answer to the question. I ask that that be stricken out.

Mr. FOWLER. I think, may it please the court, that he has shown himself a sufficient expert to tell.

Mr. CHOATE. That is not what I am objecting to. Your question was if he examined the machine carefully enough to know whether it could be adjusted.

Mr. FOWLER. Strike out that answer.

Q. Answer my question yes or no.

A. Yes.

Q. Could it be adjusted so as to be used on women's shoes?

A. I don't see that it would need an adjustment. The process is exactly the same.

Q. Then could it have been used on women's shoes?

A. It could.

Q. As to the amount of work performed by the two machines, which could do the greater, the Goodyear or the Eppler?

A. Mr. Keith told me ——

Q. No; don't tell what Mr. Keith told you.

A. I couldn't answer the question.

Q. Did you notice the rapidity of the operation of the machine there enough to determine?

A. Yes, sir.

Q. Well, what did you observe with reference to the rapidity of the machine?

A. That they were about the same.

Agents for shoe machinery talked with me when they came to our factory. Prior to 1899 agents for various manufacturers used to call on me.

I had the Hartford rounding machine, and the Loewer people got out their machine and put it in under a claim it was more efficient. I have already mentioned welt machines. We had the Tripp Giant leveler, and put in the Bresnahan direct pressure leveler in 1897. We had the American sole-laying machine and took it out at the instance of the United and put in the Goodyear machine, as the United put their machine in without charge for installation or royalty. We left the American machine standing in the factory, and think perhaps we used

it after that as a supplementary machine. I think we were paying royalty on it. After the formation of the United Company in February, 1899, agents for different machines ceased to come to my factory.

In May, 1910, I went through the factory in which Mr. Plant's machines were being operated in Boston, at the request of Mr. Brown, president of the Hamilton-Brown Shoe Company, to make an inspection of the machinery. The object of that inspection was looking to buying or acquiring the Plant patents.

226 There was some western manufacturers that contemplated this, and I was sent as an expert to look over the machinery and make a report. The manufacturers were, among others, Mr. Jackson Johnson, of the International Shoe Company; Mr. Henry Peters, of the Peters Shoe Company; and Mr. J. H. Robley, of the Brown Shoe Company. The machines were doing women's McKay and welt work, of good workmanship and high grade. I spent practically two days going over the machinery. I can not state the number of machines in operation, but it was a full line, consisting of lasting, welting, stitching, and leveling machines. The essential bottoming room machinery was the machinery I examined. The work done was equally as good as that done by our United Shoe Manufacturing Company machines, and I felt they were doing about the same number of pairs. They were actually at work on women's shoes. I saw men's shoes there which were made upon them.

We exchanged a Copeland Rapid lasting machine in 1904 with the United Company. We had those machines on the original lease, and just before the United Company took over the Goodyear Company we were notified that upon our paying $100 cash they would surrender their claim for royalty on the machines. I had a number of the machines, and the Goodyear agent, Mr. Kenney, told me where he could secure five more, and I took them. There was controversy about the surrender, as they claimed their proposal applied only to the machines we already had, but they finally yielded and I paid $500 and worked those machines continuously until 1904. Mr. Kenney several times asked me to take them out and put in "nigger-head" machines made by the United Company. Finally they made me an offer, and as I was unable to get the parts—Kenney had told me he could not furnish me any more parts, and we had been making our parts for these machines for about four or five years—they finally supplanted them with "nigger-head" machines and gave us a cash bonus of something like $3,300, I think. It seems to me that was for fifteen machines, but I am not positive on that point.

The factory of the Non-Royalty Company at St. Louis was equipped with machines by me. It had a capacity of six
227 hundred to a thousand pairs per day and made men's welt shoes. It had two welting and three stitching machines. One welter was from the Haverhill Shoe Machinery Company and one from the Champion Shoe Machinery Company of St. Louis. I got one from each company to demonstrate which was the better machine. The two were made along the same lines. In comparison with the machines in the Hamilton-Brown factory the welting machine had about the same capacity but could use a lighter inner sole, so to my notion it was a desirable machine. They were speeded to about the same rapidity. To my notion the work was as good. We used those machines from July 1, 1912, to February 2, 1913, when our factory burned. I used in this factory a lasting machine imported from the Standard Rotary Company of Rushden, England. I could not get a laster in this country other than those of the United Company. I looked over all the available markets. The Copeland, or Boylston Manufacturing Company, had a trial machine but would not put it out. After I returned from England I learned that the Krentler Company, of Detroit, had a laster they were willing to install for a trial. It was not a commercial proposition. This was about the first of May, 1912. I took it and used it. It was a crude machine, but I figure it will produce more and better shoes than the Number Five bed laster. It had no milled parts, and the mechanism was roughly constructed. It had been made by hand, as all experimental machines are. The Krentler's also had another machine which they had installed in our factory the day it was burned. That was their entire output. I had the Standard Rotary's leveling machine which we got from Rushden, England. That was the only one I know of on the market outside of the United Company's. I tried to ascertain if there were any other machines. The one we got does excellent work. We had a full equipment for producing men's welt shoes, except a pulling machine. The custom is to buy machines ready-made, but we had to order the one we got in England, as they had exhausted their supply. They had shipped one complete equipment to Australia and one to Italy just as I came into the market, so they had no machinery on the floor. They are producing machines regularly. The same condition applied
228 to the lasting machine we got abroad. I got a sole moulder, stitching machine, indenting machine, and two rough rounders abroad because we could only get them from the United Company in this country. At the time we were equipping that factory in 1912 we could not obtain a full line of welt-

ing or lasting machines in this country other than from the United Company. We didn't obtain a full line of metallic fastening machines in this country independent of the United Company, but we did obtain a full line of heeling machines independent of the United Company from the Haverhill Shoe Machinery Company—but it took two months to get the first one. In respect to the general line of machines such as are marketed in the United Company's general department, we picked up from different people an equipment, buying a machine here and there, some of it second-hand, rebuilt machines. We obtained enough machines of this character to operate with two welters and three stitchers. A factory with a capacity of ten thousand shoes per day could not have equipped itself with this class of machinery in 1912 outside of the United Shoe Machinery Company. Prior to 1899 there were two heeling machines on the market, the American and the Mayo, I think.

Cross-examination:

Standard screw wire is a special form of wire, produced only by the United Company, with a double thread to make the fastening more secure, adapted to use in a particular machine—the Standard screw machine—and made for a particular form of shoe. We paid fifty-four cents a pound for the wire and got the use of the machine for nothing. There are other kinds of machines that insert other kinds of wire fastening in other kinds of shoes.

I started with the Hamilton-Brown Shoe Company as an office boy and was with them twenty-eight years. I rose to be vice president. Mr. A. D. Brown was president. He was a member of the Shoe Manufacturers' Alliance. I do not know that
229 Mr. Brown or the company is or was interested in the Boylston Manufacturing Company. My present firm is Burrough, Jones & Dyer. They are not in the group of St. Louis manufacturers referred to. They are in St. Louis, where Mr. Jackson Johnson, Mr. Rand, and Mr. Brown are. The Hamilton-Brown Company was a subscriber to the Non-Royalty Shoe Company. I was selected to equip and operate the factory. It was operated for eight or nine months making shoes. It made reasonably satisfactory shoes, some of which were marketed in the Central West. They were exclusively men's welts. We confined ourselves to welts, and didn't try to make McKay shoes or standard screw shoes or peg shoes. Almost every operation connected with the making and assembling of the upper is done by machinery. The operations of the machines in the ordinary shoe factory are divided into at least eight different departments,

which go by the names of rooms—as, for instance, the cutting room.

Mr. CHOATE. I only want to bring out the fact of how very much larger the field of shoe machinery is than that portion occupied by the machines of the United Company, and that the machines of the United Company relate principally to the bottoming operation; that is, only connecting the upper and the sole.

BROWN, J. I thought that was all conceded on the opening.

Mr. CHOATE. Well, perhaps it is.

BROWN, J. I thought that was conceded—that the bill concedes that it relates only to the bottoming.

Mr. GREGG. Precisely. We make no contention that the United Shoe Machinery Company controls machines for stitching the uppers of shoes.

BROWN, J. Do you make the contention that it controls anything except bottoming machines?

Mr. GREGG. Eyeletting machines.

Mr. FOWLER. Yes; and clicking machines.

Mr. GREGG. And clicking machines used to die out the uppers, to cut the uppers of shoes. That is, as to the machines used for stitching the uppers of shoes, we make no contention that the United has a monopoly of that business.

BROWN, J. Well, it may be desirable, as Judge Putnam suggests, to show that the United Company occupied only a portion of the field.

Mr. CHOATE. Well, I will take your honor's suggestion on that.

PUTNAM, J. Very well, Mr. Choate. Show it in your own case.

230 The WITNESS. The Copeland Rapid Lasters which I exchanged were old machines. The "nigger-head" machine is otherwise called the Consolidated & McKay hand-method lasting machine. It was developed later than the Copeland Rapid. It was used more on McKay shoes, and the Copeland Rapid more on welt shoes. We did not get as many "nigger-heads" as we had Copelands. They were gradually dropped, and the Number Five Lasters put in their place. It is better adapted for men's welts. This Non-Royalty factory was designed to be equipped for making welt shoes. The Goodyear welt shoe is known to the trade as a welt shoe made on the Goodyear machine, the word "Goodyear" being recognized as a trade-mark. It is the name of a machine which is manufactured only by the United Company. The shoes made at the Non-Royalty factory were called "Non-Royalty welts." That was stamped on the shoes. There was

only one United Company machine in that factory. It was a ~~Non Royalty~~ non royalty machine. I am not a trained mechanic. Have never invented any machinery and never received any technical training as a mechanic or mechanical engineer. My knowledge of machinery is such knowledge as a man gets who is a

231 manufacturer of shoes. I examined the Eppler machines at Mr. Keith's in 1897 or 1898 at the solicitation of the agent of the Eppler Company. We did not install any of them in our factory. I did not consider the Eppler machines superior to the Goodyear, and we made no effort to put them in our factory. The shoes which Mr. Plant was making for the market on his new machines were women's shoes. There were a half dozen cases of men's shoes that had been stitched but not heeled. Men's cases run twenty-four pairs to the case. I couldn't say whether they had been done some time before our examination. To the best of my information those machines had never made any men's shoes for the market. I questioned the strength of those machines for making men's shoes. The frames of the machines of the United Company were heavier and stronger than those in the Plant factory. The making of men's welts involves dealing with heavier material and requires more strength in the machine than the making of women's welts. If his machines had been used commercially on men's shoes the frames should have been stronger. As a commercial proposition they would have to be built heavier to make them available for that purpose.

We superseded the sole laying machine we had before 1899 with a United Company machine because we thought the terms were better. No pressure was brought to bear on us. We did it because we wanted to and thought it was a better proposition for us. We also changed the Bresnahan leveler, which we had put in in 1897 for a United Company direct-pressure leveler, as I thought it stronger. The United Company offered us a new machine to displace the Bresnahan, and I thought the new machine better.

The Goodyear welt machine can be used on both men's and women's shoes, so the Eppler had no advantage in that respect. I am familiar with the way the Eppler welt machine laid the seam only from the impression that it made on me at that time. I don't recall—I remember there was a difference, but I could hardly describe it.

232 I did not look into the question whether a factory could be equipped for making McKay shoes without taking machines from the United Company.

More McKay shoes are made than any other one kind. A very large number of McKay's are made—more McKay's than welts. I did not consider whether McKay shoes or pegged shoes could be made without using United Shoe Machinery Company machines. I found that a factory could be equipped without using United Shoe Machinery Company machines for making metallic fastened shoes with heavy outsoles. Such shoes could not be made if light outsoles were used. A very large number of those shoes were being made for outing shoes. I did not consider whether a factory could be equipped for making turn shoes without the United Company's machines. All the United Company's Goodyear welters and stitchers are peculiarly adapted for making welt shoes. It was in that welt shoe field that I was trying to equip a factory. I made a welt shoe which to the layman's eye would present no difference.

The Non-Royalty welt shoe we made I considered a better shoe than the Goodyear welt. We closed down simply because of the fire. Our two welters were enough for a factory with a capacity of from six hundred to one thousand pairs a day. Our three stitchers were enough for six hundred to seven hundred and fifty capacity. We were aiming for an output of from six hundred to a thousand pairs a day. For a factory of that output we would need one heeler. We could do our lasting with the Krentler and three other lasting machines. We had one slugger and could have done our work with that. We have advertised the sale of our machinery. I produce a list which is a complete list of all the machines in the Non-Royalty factory which we were offering for sale on June 2, but postponed the sale of. It represents a list of the machines ordinarily needed in making a welt shoe from start to finish.

(A list of machinery of the Non-Royalty Shoe factory printed in connection with the proposed sale is marked "Defendants' Exhibit 42.)

233 Prior to the Non-Royalty the Goodyear welt was the only welt shoe properly so called in this country as far as I know. The welt shoe gets its name solely from the fact that a strip of leather called the welt is instrumental in uniting the sole with the upper. That is what distinguishes it from other kinds of shoes, like the turn, the McKay, the pegged, and the standard screw shoes. When I was with the Hamilton-Brown Shoe Company I made a shoe that I gave an individual name to. I called it the "security welt." We made a McKay shoe first and then stitched an outsole into it.

Direct examination resumed:

The "security welt" was not, strictly speaking, a welt shoe. The one machine we got from the United Company for our Non-Royalty factory was a creasing machine. It belongs to the general department. We bought that outright. The frames of the Plant machines could have been made heavier.

234 JUNE 5, 1913.

GEORGE R. HARSH, witness for the United States:

I reside in Milwaukee. I am engaged in the shoe manufacturing business. I have been for seven years president and general manager of the Harsh-Edmands Shoe Company. Before that I was superintendent of the factory of Roberts, Johnson & Rand Shoe Company. We make welt, nail, and standard screw men's and boy's shoes. We have used, I think, no machines in the bottoming department other than those obtained from the United Company. We have used a machine obtained from the Union Lock Stitch Company for making a stitch which ornaments the outer edge of a nailed or standard screw shoe, giving it the appearance of a welt shoe from the upper side but not from below. I do not believe the United Company makes a machine for that specific purpose. Their Goodyear stitching machine can be used for that purpose. We used it for that purpose previously. The Union lock-stitch machine is better and more rapid for that purpose. The thread of this machine goes through the soles only and does not attach soles to the uppers. The majority of our shoes have two soles and the stitch goes through both soles. We paid seven hundred and fifty dollars less five per cent for that machine. The United Company's machine that could be used for the same purpose could also be used for out-sole stitching on a welt shoe. The lock-stitch machine could not do this because it does not have a curved needle enabling it to get into the shank of the shoe. In a nailed shoe the two soles are usually stitched together and then they are nailed on to the shoe. We formerly used the Goodyear out-sole stitcher to stitch the two soles of a nailed shoe together before nailing them to the upper. We substituted the Union lock-stitch machine for that operation.

235 I have seen advertisements of a different type of Union lock-stitch machine but have no personal knowledge of their existence and do not know their price. A lock stitch is a stitch made with two threads, one going from the upper side of the work and one from the under and the two coming together and forming a lock, whereas a chain stitch is a single thread and will pull out.

We pay twenty-one cents per pound for iron nails for the loose nailer. I have investigated and they were priced to me for seven cents a pound at a place elsewhere than from the United. We use clicking machines which we lease from the United Company. I made an effort to obtain them from Richardson Shoe Machinery Company of Lynn, and bought one machine. I have endeavored to buy others and to get them made in Milwaukee but did not succeed. I had a conversation with Mr. C. H. Wilson, assistant to the general manager of the United Company, regarding clicking machines. I had been trying to procure clicking machines from other sources than the United Company and Mr. Wilson had heard of it and on my next visit to Boston he left word in the lower office that he would like to see me in his office, which was upstairs. I went up and Mr. Wilson said he had understood that I had been quite active against the United Company. I explained to him my activity. Mr. Wilson told me that it would be better for me if I ceased my activity against the United Company and took things as they were. I objected to the clause in the lease of the clicking machine that said I should pay royalty on shoes welted, stitched, or heeled on other machines than the United Company's, if I used the other machines, or words to that effect. He called my attention to the fact that there was a condition of a similar nature to the feature of the clicking machine lease I was objecting to in another lease of another machine, the metallic department
236 lease as I remember it. After buying the one Richardson machine we equipped our factory with United clicking machines. I made no further efforts to get clicking machines elsewhere than from the United Company. We are not using the Richardson machine. I do not know what became of it.

I have an interest also in the Boylston Shoe Machinery Company. My sole and only reason for taking that interest was to supply my own business with shoe machinery.

My factory has a capacity of three thousand pairs of shoes per day.

Cross-examination:

I was with Roberts, Johnson & Rand from its formation until 1906, about eight years. I was with them before that when they were shoe jobbers for about five years. I was assistant to the general manager of the factories when I left. I severed my connection with them and decided to go into manufacturing shoes. When I went into business for myself I applied to the United Company for machinery. I took my bottoming room

machinery from the United Company on the noninitial premium lease and the other machinery for other rooms I got from other machinery manufacturers.

(Referrring to the nails mentioned on direct examination)—I had a loose nailer of the United Company and agreed to buy my nails for that machine from that company at twenty-one cents per pound. I pay that for the material and get the use of the machine for nothing. I conversed with Mr. Otto H. Falk, president of the Allis-Chalmers Company, which makes a general line of power machinery, showed him the nails and asked him what he could supply such nails for. My inquiry and his response related simply to what he could supply the nails for without any reference to the machine. He was not in the nail making business to my knowledge.

At the time I talked with Mr. Wilson, the United Company had the only practicable commercial clicking machine
237 on the market, of which I had knowledge. The clicking machine is a machine for cutting out the uppers with dies. At that time I already had some other kinds of machines, general machines, that I had obtained on the noninitial premium form of lease. I had inquired of the Richardson Shoe Machinery Company, the Seeley Manufacturing Company, and Logemann Brothers, of Milwaukee. I am not clear whether I had obtained the Richardson machine before I talked with Wilson. It might have been after. I was in Boston when I heard Mr. Wilson wanted to see me. He was a quiet man and greeted me courteously. He was always a man of exceedingly courteous and kindly personality. He met me in his usual courteous way. Our conversation turned upon clicking machines and the fact that I was in the market for one. He told me the United Company manufactured one. I don't recall whether he referred to the fact that I was obtaining other machinery of the company. Something brought the situation around to our discussing the kind of leases which I had of the company which of course presented the situation of my being a customer of the company. In that conversation I objected to the company's lease on the clicking machines. He pointed out to me that in another lease I had was the same provision, or restriction, to which I objected, so that there was no additional restriction by taking the company's clicking machine. I had not appreciated that before. He presented that by way of argument to meet my objection, fairly and quietly.

238 Q. And I say when he had done that, did he then urge you to take the United Company's clicking machine?

A. Yes.

Q. Well, now, was it in that connection that he said that you would be better off if you did take the United Company's clicking machine?

A. No. As I recall it, the very first part——

Q. Now, pardon me a minute.

Mr. FOWLER. May it please the court, I would like him to explain.

Q. You say it was not in that connection that he urged you to take the company's clicking machine?

A. It was not in the connection you are trying to show; no.

Q. It was not when you were discussing the form of the lease?

A. No.

My impression is that Mr. Wilson's advice to take the United Company's clicking machine was at the beginning of the conversation before any talk about the terms of the lease. I do not remember discussing royalties on clicking machines. We both understood all about that. When he told me it would be better for me to take the United Company's machine it was in rather a severe tone of voice for Mr. Wilson.

Q. Now, as I understand you these are the facts: You were mistaken with reference to the objection which had been your principal reason for not taking it. It was the only commercial clicking machine in the market?

A. I object to your first condition.

Q. Well, I thought I started it right. You had not appreciated before that the restriction in the clicking machine lease was the same as the restriction to which you were already subject?

A. Similar, not the same.

Q. Well, similar. And the United Company's clicking machine was the only commercial machine in the market?

A. That I believe to be true.

Q. You wanted to use it for commercial purposes?

A. Yes, sir.

Q. You were a general customer of the United Company?

A. Yes, sir.

Q. The company was giving service with its machines, or to lessees with its machines?

A. I never cared much for that.

Q. I say, it was giving service?

A. It was offering it.

Q. There was no other company that you know of that was doing that with reference to clicking machines?

A. No.

239 I know of no reason why his advice was not sound as a practical business matter. I followed it. It certainly has proved to be sound. We used the Richardson machine only a short time. It was not commercially practicable and that was why we gave it up.

240 JUNE 5, 1913.

FRANK W. MERRICK, witness for the United States.

My full name is Frank W. Merrick. I live in Boston and am president of the Union Lockstitch Company. That company is located in East Boston and manufactures shoe machinery. We manufacture a straight needle lock-stitch machine for saddlery and shoe work and a curved-needle stitching machine for shoe work. We make a lock-stitch welt machine, a sole-fitting machine, lasting machines, and two metallic fastening machines, used in connection with lasting operations. I have been building shoe machinery for thirty-two years, mostly stitching machinery. I have built the Merrick stitching machine, used almost exclusively on upper fitting; the Puritan machine, used both on upper fitting and sole stitching and also harness and saddlery work; and a small chain-stitch machine, called the Rapid machine, for a similar class of work. After that I followed with the lock-stitch harness machine, which is a straight needle, waxed-thread stitching machine that can be used for certain kinds of sole stitching, and then with the curved-needle machine, designed expressly for stitching outsoles, both welted and McKay welt and McKay fair stitch shoes. It will do fair stitching on any type of shoe. At present we are putting the straight-needle lock-stitch machine on the market. We have between three hundred and fifty and four hundred lock-stitch machines out. We first engaged in the manufacture of the lock-stitch machine in 1904. We sell those machines outright at seven hundred and fifty dollars, five off in thirty days. The machines are all over the United States. About seventy-five of the straight-needle machines are in shoe factories and the balance were placed among harness and saddlery people. We are attempting to market the curved-needle machines, of which three have been sold to shoe factories. Two are in the factory of Utz and Dunn, in Rochester, and one in the factory of the Cosey Slipper Company in Lynn. We have sold one other machine, making a total of four curved-needle machines that have been sold.

241 We have put out two curved-needle machines which we have not sold. One is with the Excelsior Shoe Company, of Portsmouth, Ohio, and the other is with the Selby Shoe Company, Portsmouth, Ohio.

The difference between our straight-needle and curved-needle machines lies in the design and construction. One machine uses a needle which is straight, as straight as a needle in a family sewing machine, and reciprocates in a right line, the needle and awl both working in the same line. In the curved-needle machine the needle and awl work around a common center; the needles are curved in the arc of a circle so that a path which the needle and awl make through the cloth or leather is through the segment of a circle. The diameter or radius of that circle runs from perhaps an inch to two inches, according to the type of machine and class of work—a small segment of a circle. The curved-needle machine is designed in a way so that the needle and awl will reach in to the curved shank of the shoe when it is stitched with the last in the shoe, so that the needle and awl will clear the overhanging bulge of the last in the shank of the shoe and so that one edge of the sole and welt can be stitched together without interference with the upper.

We have been putting out the curved-needle machine about two years. Have been putting out the straight-needle machine since 1906 or 1907.

I talked with Mr. Sampson, an officer of the United Company, about a purchase of my business and afterwards with Mr. Winslow at the Touraine Hotel. Both conferences were in the summer of 1905. I was at that time developing the straight-needle lock-stitch machine. The conference with Mr. Winslow was arranged by Mr. Sampson and was held at Mr. Winslow's solicitation. Mr. Winslow, Mr. Luitwieler, treasurer of our company, and myself were present. Upon being shown to Mr. Winslow's room, he greeted us with, "Well, boys, what is your proposition?" I told him we had no proposition to make and he expressed surprise, saying he understood we had a proposition we wished to make. I told him we understood he wanted to make a proposition and with that he began to attempt to persuade us to sell out our business to the United Company. We told him we preferred to keep our business, as it was not far enough developed to talk of selling. Mr. Winslow asked, "How much money have you got?" I told him I did not think that made any difference. He said, "We will see that you never make a dollar." I told him if that was the object for which they were in business they might succeed, but that it might prove expensive. He said, "Why, Merrick, you can see that we could not allow you to make any money." I asked him how he was going to stop us, and he said, "We will build your machine." He said, "You know what we did to Parsons, in Marlboro? We wanted to buy him out and he would not sell, and we built his

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machine, and you know what became of him." "Well," I said, "Mr. Winslow, unless you change your methods or change your men not in a thousand years will you build a machine that would interest me." So finally we agreed to disagree. Mr. Winslow said he sat there at the head of a table like a banker and eventually the wheel in its rotation would stop in front of him with our business and he would take it. We did not sell out. It was the straight-needle machine that we were working on at that time. We were not then putting out any machines. I presume it was the straight-needle machines—our general business—that we were talking about. I don't recollect that we went into the mechanical construction of the machine at all. I couldn't say whether it was mentioned at all. Our straight-needle machine was ready for the market about 1907, the curved-needle machine about 1909. The first one went to Healey Brothers, of Stoneham.

243 The United Company has a curved-needle machine for doing similar work to ours. The Campbell-Bosworth Company has a machine for doing work similar to our straight-needle machine.

We have had difficulty in installing our curved-needle machines with the Excelsior Shoe Company, of Portsmouth, Ohio. Negotiations began with them in April, 1912.

(At this point the United States made the following offer of proof:

With respect to the attempt of the Union Lock Stitch Company to install a curved needle lockstitch machine in the shoe factory of the Excelsior Shoe Company, Portsmouth, Ohio, early in April, 1912, the United States offered to prove that the Union Lock Stitch Company was unable to install such machine for the reasion that the officers of the Excelsior Shoe Company were not permitted by the United Shoe Machinery Company to install the machine and use it in the same factory with its machines at the same rates of royalty as had previously been paid by the Excelsior Shoe Company. The United States offered to prove further that the additional royalties or installation charges which were to be exacted by the United Shoe Machinery Company for the privilege of installing the Union Lock Stitch Machine amounted to about $7,000. This attempt to install the machine in the Excelsior Shoe Company factory occurred in April, 1912, after the petition was filed.

This evidence was excluded because it related to a matter occurring after the filing of the petition.

Mr. FOWLER. Here is our position: This bill attacks this concern as being a monopoly, and it is alleged that they formed this combination back in 1899, and from 1899 up to the present time they have been doing various things for the purpose and with the intent of monopolizing. Now, of course, we are attempting to prove now a mere evidential fact. This particular fact does not constitute the monopoly, but it tends to show that there is a monopoly, and it tends to show the purpose of the original organization.

244 The WITNESS. We had difficulty in installing the curved-needle machine in the factory of the Selby Shoe Company, of Portsmouth, Ohio, about practically the same date.

Mr. GREGG. At this point we make the same offer of proof with respect to the Selby Shoe Company as in the case of the Excelsior Shoe Company.

BROWN, J. I understand your point to be that you desire to show by what happened after the bill a condition which existed prior to the filing of the bill.

Mr. FOWLER. That is our proposition.

BROWN, J. Because of proof of something subsequently appearing connected with something which happened before the date of the filing of the bill?

Mr. CHOATE. Of course that would involve, if it were to be considered at all, knowing what the leases were which the Selby Company had and when they got them.

Mr. FOWLER. We have present, your honors, and we expect to offer, Mr. Williams and Mr. Selby, who know these facts. Of course, probably by this witness we could not connect the United Shoe Machinery Company with it except by hearsay and correspondence, but we have the gentlemen present who did deal with the United Shoe Machinery Company.

BROWN, J. The proposition is that these tying clauses closed the market and the market remains closed.

Mr. FOWLER. That is it.

PUTNAM, J. The effect of these tying clauses, then, is shown, as a matter of law, and has been shown and illustrated by these witnesses that we have had here. My objection to this is the matter of convenience. It is a matter that is not necessary and we ought not to be burdened with it. It illustrates nothing we want. We don't need the evidence, and we want to protect ourselves by the rule with reference to the time of filing the bill. My objection is a practical one. I haven't any theory about it whatever.

This evidence was excluded because it related to a matter occurring after the filing of the petition.)

The WITNESS. Prior to December 12, 1911, we had installed only one curved-needle machine; that was with Healey Brothers, in Stoneham. We made efforts to install the machine in other factories. We tried to sell our machines to Mr. Jones, to Roberts, Johnson & Rand, Harsh and Edmands, and Peters Shoe Company, and could not sell them. Not all these transactions were by letter. Mr. Jones said the conditions in his leases of his other machines would not admit of his use of the machine and that he couldn't afford to touch it because his leases forbade him. Roberts, Johnson & Rand gave the same answer. Their reply was in writing. I think Mr. Jones replied in writing.

245 Our curved-needle machine had a capacity of from thirty to fifty dozen—three hundred and sixty to six hundred pairs per day. We have had no difficulty in installing the straight-needle machine. The straight-needle machine attaches the sole of a shoe to a slip sole or welt, and in some cases the outsole to the upper direct. The seam runs on the outside of the shoe. It is efficient in making a McKay fair-stitched shoe, and also in certain types of shoes in which the slip sole or welt is McKayed on and the outsole fastened to the slip or welt. It is not efficient for a shoe in which the shank overhangs the sole. In the case of a shoe in which the entire sole is McKayed on or fastened directly to the upper we have no difficulty in fair stitching. But where the slip sole is McKayed on and the outsole fair stitched to it, we can not do business unless the shoe has a straight shank, because otherwise that work, while identical in character, requires the curved-needle machine.

We have never had trouble in using our straight-needle machine for any purpose anywhere and we have had trouble in using our curved-needle machine everywhere. I never could tell where the distinction rested.

The applicability of the straight needle to welt sewing depends upon the shape of the last. If the shank is fairly straight the straight needle will do; when the shank is curved to a certain degree it is necessary to use a curved needle. The operations are identical, but we are permitted to do it on a straight-needle machine and not on a curved-needle machine.

Fair stitching is more than mere ornament. In the McKay fair-stitched shoe it holds together the edges of a double sole, and in a McKay welt where a slip sole is first McKayed on and then the outer sole fair stitched to it, the fair stitching is necessary for the fastening of the sole. About forty shoe

manufacturers have about seventy-five of our straight-needle machines.

246 Cross-examination:

Regarding my talk with Mr. Winslow in 1905 or 1906 I met Mr. Sampson first. I met him aboard my boat where he was my guest. We went down to Hull Yacht Club. I took him to lunch there as my guest. Mr. Buck, connected with the Shawmut Machinery Company, first introduced Mr. Sampson to me. He did not do so at our suggestion, but at his own suggestion. Mr. Buck knew about my straight-needle machine and was familiar with what we were doing. I did not ask him if he knew anybody connected with the United Company. He introduced the subject and asked permission to introduce Mr. Sampson. I don't think he mentioned his name at that time but said he knew someone in the United Company. Mr. Buck didn't invite himself to lunch with me and didn't invite himself on my yacht. I told Mr. Buck to bring Mr. Sampson over if he had anything to say. I did the inviting after the introduction. After lunch Mr. Sampson asked me if we had any proposition and we asked him if he had one. When we had Mr. Sampson out with us that day we talked about our company and the enterprise in which we were engaged. The company had then been formed. It did not have anything it was at work upon except the straight-needle machine, which was still in the experimental stage, partially developed. None of them had been put to any commercial use. We had applied for the patents. We didn't get anywhere with Sampson. He didn't have anything to say. I don't know whether Buck took Mr. Sampson a sample of work done on our machine when he went to interview him before this yachting trip. I do not recall giving him a sample. I do not deny having done so. I did not tell Mr. Sampson we would like to sell our machines and accept a position with the United Company or anything of the kind. We met Mr. Winslow a few days later. At the time we met Mr. Winslow we still had the experimental machines. None were out in factories. I don't know whether we had any patents or not.

247 Mr. Winslow asked what our proposition was. I told him I understood he wanted to see me and that he had a proposition. We were mutually surprised. He then asked how much money we had. I didn't tell him. It might have been how much "capital" we had. I told him we had enough to get along. I said "What difference does it make how much we have got? What has that got to do with it?" I think that is all he said on that subject. Then he said he would see that we didn't make a dollar. I am sure those were his exact words.

Then he said, "Merrick, you can see that we couldn't allow you to make any money." I remember that distinctly.

Q. In other words, you had some feeling about it?

A. Possibly.

Q. Well, you have stated, haven't you, that you were looking for a chance to get at Mr. Winslow?

A. I don't remember that.

Q. You won't deny it, will you, sir?

A. Yes, I deny that.

Q. You have stated that pretty recently, that you were looking for a chance to get at Mr. Winslow, haven't you?

A. I don't remember that.

Q. Will you deny it?

A. Yes, sir.

Q. That you have never said that in substance or effect?

A. Oh, I won't say that.

Q. You have said it in substance or effect within six months?

A. I won't say that either.

Mr. FOWLER. I don't like to interpose objections, but I will object unless he fixes the time and place and the person to whom it was said. He can't contradict in that way.

Mr. CHOATE. I presume I can attempt to show animus in any way.

248 PUTNAM, J. We will allow it.

Q. You have made use of some expression to the effect that you were going to try and get square with Mr. Winslow or get at Mr. Winslow?

A. Not that I recall.

Q. Or something to that effect?

A. Not that I recall.

Q. Now, what was it?

A. I don't remember anything of that kind.

Q. Well, in substance what is it that you have said that indicated your feeling toward Mr. Winslow?

A. Whenever I have mentioned Mr. Winslow I have always said personally my feelings were friendly, and personally Mr. Winslow has always treated me in a way I couldn't object to.

Q. Even at the Touraine?

A. I don't know as I could object to that particularly; but it was a business bluff.

Q. A business bluff?

A. Apparently.

Q. Well, that doesn't seem to me quite to come up to your suggestion that it was as if you were going to try to throttle

me, unless you were making a bluff; are you making a bluff now?

A. No, sir.

Q. About this testimony?

A. No.

Q. Did you regard Mr. Winslow's talk as a bluff?

A. I regarded it as a threat.

He treated me perfectly courteously. I regarded what he said as a threat made to influence my decision in the matter of selling out.

I was not bluffed by what he said. It didn't influence my conduct. It might have frightened me a little. Up to that time the straight needle machine was the only thing we had developed. We have not been interfered with in marketing it except by ordinary methods of competition.

249 A fair stitch is a stitch around the edge of a sole, through the sole. McKay sewed, McKay welts, standard screw, and some pegged shoes may carry that stitch. I think it applies to Goodyear welts. It goes through both soles in the space of the sole outside the upper. It may be inserted either before or after the sole is attached to the upper. It may be done with a straight or curved needle. A McKay welt is a shoe in which a welt is sewed to the upper and insole with a 250 McKay machine which fastens through and through. The stitches show on the inside. In that kind of a shoe a fair stitch appears on the outsole next to the upper. Sometimes it shows also on the bottom and sometimes it is in a channel. Our curved-needle machine will do fair stitching on any part of a shoe.

The Goodyear rapid lock-stitch machine of the United Company was adapted to doing fair stitching with a curved needle. That is the machine whose principal function is to sew the outsoles to the welt in a Goodyear welt shoe and which in connection with the welting machine makes the Goodyear welt shoe. Sometimes it is desired to put in a fair stitch to make a shoe look like a welt shoe. Some people have used the Goodyear lock-stitch machine for putting that fair stitch on a shoe which is not a Goodyear welt. Our curved-needle machine may do the same work. In addition to fair stitching our curved-needle machine will stitch the outsole to the slip sole of a McKay shoe. Our machine has been practically used also for making stitch downs. These are shoes in which the upper is drawn over the last and instead of being lasted under, the edges are turned out and the welt laid on that outturned edge and the welt and the out-

turned edge and the sole are stitched through and through, the outturned edges being sewed to the top sides of the sole. It can also be used to sew the outsole of a Goodyear shoe to the welt.

We have seven completed curved-needle machines and a dozen nearly assembled. Our factory is about 80 x 200 feet, two floors.

I have not, within the last two years, tried to sell out our machines to Mr. Connor, of the United Company. I have talked with him about selling out and offered to sell them all we have, but have sought no interviews. I met Mr. Connor first at the Boston Yacht Club. I have met him more than once in company with Mr. Luitwieler, who is associated with me. We discussed the matter of sale of our machines and Mr. Connor said
251 under prevailing conditions it would be wise to let the matter drop, but later on he would be interested. This conversation was in the summer of 1911. I showed him our machines and took samples to him of their work. I told him I wanted seven hundred and fifty thousand dollars for our property. I think I would have been willing to take that at that time.

Direct examination resumed:

At that time Mr. Connor said they did not dare buy a competitor, that if they did they might be liable to go to jail. Mr. Bresnahan sought this second conference after he had sold out to the United Company. He asked us to have the conference. We were sought and we listened. We were asked to set a price and we set one. Nothing came of it and we didn't expect it would.

JUNE 6, 1913.

Recalled:

The first sale of our curved-needle machine was May 15, 1910, to Healey Brothers, of Stoneham.

JUNE 26, 1913.

Recalled:

(The Government offered the following letters to Merrick, purporting to state reasons why the writers could not install machines of the Union Lockstitch Company:

Letter from Commonwealth Shoe & Leather Company dated April 5, 1911, marked "Plaintiff's Exhibit 177." Letter from Peters Shoe Company, dated April 24, 1911, marked "Plaintiff's Exhibit 178." Letter from Roberts, Johnson & Rand Shoe Company, dated May 9, 1911, marked "Plaintiff's Exhibit 179.")

Cross-examination resumed:

Roberts, Johnson & Rand, and Peters Shoe Company now have Union lockstitch machines. The Commonwealth Shoe and Leather Company have none. Those letters are in answer to a circular we sent out on May 5th or thereabouts. The letters produced were received sometime before I went before the grand jury. I think those are all the responses we had to our circular. They are not responses from all persons to
252 whom we sent our circular. I don't remember to how many we sent circulars—only a few. I couldn't say whether we sent circulars to anybody except members of the Shoe Manufacturers' Alliance. We didn't know who the members were. We didn't send them to shoe manufacturers in general—just to the larger representative manufacturers.

253 JUNE 5, 1913.

CLARENCE S. LUITWIELER, witness for the United States.

My name is Clarence S. Luitweiler. I live in Newton. I am treasurer of the Union Lockstitch Company. I have been connected with it ever since its formation in 1905. I attended a conference at the Touraine Hotel in 1905 with Mr. Merrick and Mr. Winslow. When we first went into his room there was talk about chess and other matters and finally Mr. Winslow said to Mr. Merrick, "Well, boys, what is your proposition?" Mr. Merrick said, "We have no proposition. We understood from Mr. Sampson you had a proposition to make to us and we came here to listen." We talked about various matter and finally Mr. Winslow said to us, "How much money have you got?" I don't know whether he referred to capital or how much we had accumulated. We said that had no bearing on the case. Finally he said, "I will see that you never make a dollar." We told him that did not interest us very much. "Well," he said, "I can tell you just how we did it." I said, "How was that?" He said, "Take the case of Mr. Parsons of Marlboro. We tried to buy his business and he would not sell us. We went out and built his machines and we sold them at a price which was less than he could build them for." And then, turning to the window, he said, "You see what you have before you, nothing but blue sky, that is what you are dealing with." A little further along he said, "This is very much like a game of roulette. The wheel is swinging around and your proposition will sweep in front of me some day and I will take it." I think he asked us a price and we told him that our price was a million dollars, which he said was ridiculous, and we said we thought it was but that we might as well say that as anything as we did not think he came here to buy. Finally we started to go

and Mr. Winslow said, "Hold on, boys, don't be in a hurry, I want to talk with you. Come and have dinner with me."

We told him we could not for the same reason we
254 could not go to his office, as we were putting out stock
and we did not want our people to think we intended to dispose of the business.

Q. At that conference did Mr. Winslow say anything about acquiring the business of competitors? Did he use the word "competitor" in any way?

A. Yes; he said: "We don't believe in acquiring competitors. It is cheaper to kill them"—or something to that effect. I wouldn't say those were the exact words he used, but that is the impression it left on my mind.

The second conversation that Mr. Merrick testified about followed an occasion on which Maurice Bresnahan called at our office in February or March, 1911, and said Mr. Charles H. Wilson wanted to have an interview with Mr. Merrick. We said we could not see Mr. Wilson as Mr. Merrick was sailing for Panama the next day, and he said to let him know when he returned. While Mr. Merrick was away Mr. Wilson died, and after Mr. Merrick had been back two or three weeks I let Mr. Bresnahan know he was home. He said, "I would like to have you meet Mr. Connor and Mr. Brown." We said we did not want to go to their office, but if they would come to the Boston Yacht Club late we would be all alone there in the afternoon. They came there and took lunch with us. We carried with us some shoes of a new design Mr. Merrick had made for a party and talked it all over, but we came to no results. Mr. Connor wanted another interview and we went to his office in the summer of 1911 about five-thirty in the afternoon. Mr. Connor, Mr. Fraher, I think Mr. Bresnahan, Mr. Merrick, and myself were present. We talked in a general way there and arrived at no result. The substance of the conversation was about buying our business. We never made any proposition but were willing to listen. We met Mr. Connor again at our office and he said he wanted to see what we had. He came out to our factory after it had closed on Saturday afternoon and spent about two hours. We talked in a general way, no proposition being made on either side. Then we dined with Mr. Brown and Mr. Connor at the Algonquin Club. We then discussed the question of price and different matters. We refused to give a definite

statement of our financial condition but finally named
255 a price. It was divided into three sections—first, as a
going business; second, the value of our patents; third, so much for a competitive business. Then Mr. Connor made the

remark that they did not buy competitors and couldn't afford to buy this business on a competitive basis. Mr. Connor said, "We couldn't buy this business on a competitive basis, because at the present time if we should we probably might be liable to go to jail."

Cross-examination:

I am also treasurer of the American Stay Company. I divide my time with the shoe-machinery business. I have some investment in this shoe-machinery business. I met Mr. Connor in London at a shoe and leather fair two or three years ago. I had known Mr. Winslow before meeting him at the Touraine. On that day our parting was perfectly friendly. We first met Mr. Bresnahan casually going across the ferry. We got to talking about shoe machinery. He said, "It is a great mistake for you fellows to be out of the fold." His suggestion led to the meetings with Mr. Connor. They were entirely friendly, and no reference was made to our earlier meeting with Mr. Winslow. The talk consisted of explanation and discussion of our machinery and the shoes made by them, and finally resulted in our naming a price of seven hundred and fifty thousand dollars. All our talks came to nothing and we never made a sale.

JUNE 6, 1913.

Recalled.

I stated that at the first meeting at the Boston Yacht Club Mr. Connor was present with Mr. Brown, but it was Mr. Fraher. It was a subsequent meeting a few weeks later that Mr. Connor was present, and the new shoes were then shown to him.

256 JUNE 5, 1913.

PEARL E. SELBY, witness for the United States.

My name is Pearl E. Selby. I reside in Portsmouth, Ohio. I manufacture ladies' welt, turn, and McKay shoes. I have been in that business since 1888. I was originally with Drew & Selby, now the Selby Shoe Company. Its daily capacity is six thousand pairs of shoes. My experience with shoe machinery, especially bottoming machinery, has been such as I would get from being a general superintendent in a factory. I have looked after the installation of machines more or less in past years and at present sign the leases. We use the United Company welters and stitchers on welt shoes. On the McKay shoes we use the Puritan for fair stitch work and are now trying the Union lock stitch. We have had the Puritan and used them practically ever since we have made a McKay fair stitched shoe, about fifteen years. We bought it outright.

Q. What did you pay for the machine?

Mr. GREGG. I merely ask for the price that he paid for the machine in order to compare, before we finish this case, the price paid when the machines are bought outright and the amounts of royalties paid the United Shoe Machinery Company.

Mr. CHOATE. Now, see: He says he bought this machine fifteen years ago. Of what earthly use can it be to compare that with any royalty paid to-day or at any time since the United Company was formed?

PUTNAM, J. We all agree that it is too remote.

The WITNESS. We have not machines from the United Company for performing work similar to that performed by the Puritan machine. We also have had Bay State turn sewing machines but are not using them now. I believe we had them in 1898 or 1897—somewhere along there. We had them at the time when the agreement which you show me was signed. We had discontinued the use of those machines a short time previous to the date of that agreement.

(Agreement between Drew, Selby & Company and the United Shoe Machinery Company, dated March 13, 1900, is marked "Plaintiff's Exhibit 157." This agreement reads as follows:

"AGREEMENT BETWEEN DREW, SELBY & COMPANY AND THE UNITED SHOE MACHINERY COMPANY.

"In consideration of the sum of two thousand (2,000) dollars, to be placed to the credit of Drew, Selby & Company, on the books of the United Shoe Machinery Company, the two Bay State Turn Sewing Machines, now in the factory of Drew, Selby & Company, become the property of the United Shoe Machinery Company.

"If at any time Drew, Selby & Company desire to use the Bay State inseamers or machines for the same purpose other than ours they are to refund to the United Shoe Machinery Company the two thousand (2,000) dollars allowed them in consideration of this agreement, upon payment of which the title in the two Bay State machines reverts to Drew, Selby & Company.

"The rate of royalty to be paid by Drew, Selby & Company on Goodyear Turn inseamers not to exceed three-quarters (¾) of a cent per pair and the rate of royalty to be paid by Drew, Selby & Company on Hand Method Welt Lasting Machines to be five-eighths (⅝) of a cent per pair (except on misses' and children's, which will be one-half (½) of a cent per pair.

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"If Drew, Selby & Company use the United Shoe Machinery Company's machines exclusively, the United Shoe Machinery Company agrees to refund to Drew, Selby & Company at the end of every quarter, the amount paid in royalty by Drew, Selby & Company on the Gem Insole Machinery during the preceding quarter of each three months.

"MARCH 13, 1900.

"(Signed) "UNITED SHOE MACHINERY COMPANY.
"GEORGE W. BROWN, *Treas.*
"DREW, SELBY & CO.")

We entered into this agreement because the United Company desired to replace the Bay State machines with their own. The Bay State machines were doing good work. The capacity was about the same. In the use of the Bay State machines, we had discovered a method by which we could make the Goodyear machine work a little bit better than the Bay State. We put this improvement on the Goodyear machine and they purchased the improvement and put it on their machines. They gave us credit of $2,000 for the two Bay State machines. We thought that offer would be better than the use of the Bay State.

We retained possession of the Bay State machines. The Bay State Machinery Company was then in business to the best of my knowledge. If we had not received this two thousand dollars consideration and the refund provided for in the agreement, we would not have discontinued the use of the Bay State machines. We had bought them outright, paying a thousand dollars apiece for them.

We are not using the Gem insole machine now. We discontinued using it several years ago. We use a leather insole altogether. We have had the Union lock-stitch machine since some time last winter. We are using it more or less. We have not paid for it. It is the curved-needle machine.

We have no lasting, heeling or metallic fastening machines other than those of the United Company. We have two Puritan stitching machines with which we do fair stitching, the
258 use of which does not affect the royalties paid to the United Company. We have no machines from the United Company for performing work similar to the work performed by the Puritan machines.

I was not at the St. Louis conference with Mr. Winslow, but did attend the conference with him in Boston in May, 1911. I have an interest in the Boylston Manufacturing Company, which I acquired in January or February of this year to protect the business of the Selby Shoe Company, to get independence.

Cross-examination:

Our investment is sixteen thousand dollars in the Boylston Company, made in January, 1913. I am a member of the Shoe Manufacturers' Alliance, and have been practically since its beginning, and subscribed to three thousand dollars worth of stock in the Non-Royalty Shoe Company. We make ladies' welts, turns, and McKays—not men's. Sixty-five per cent of our output is welts, ten per cent turns, and the balance McKays. Our welts are Goodyear welts, our turns Goodyear turns. I do not believe there is any genuine welt shoe on the market to-day except the kind or type that we make. We make it with the United Company's welters and stitchers. We use most of the auxiliary machines that go with those welters and stitchers. For doing McKay work we have the Puritan stitcher and a number of other machines not obtained from the United Company, which we use in the same factory with the United Company machines, without objection from that company, and have been doing so for ten or twelve years. We use those other machines all through the process of making McKay shoes, including the bottoming room.

The Bay State machines inseamed a turn shoe. We had had them about a year when we made the trade with the United. We had two Goodyear turn machines before we got the Bay State machines, but we stopped using them when we secured the Bay State machines and got them properly installed. The Goodyear machines remained in our factory. We invented a ten-
259 sion release for the Goodyear machine, without which it was impossible to use cotton thread successfully on turn work on that machine. This tension release allowed us to use cotton thread instead of linen. The Bay State machines did not have that. The cotton made a better seam. With that attachment, we thought the Goodyear machine, as it had been developed by the United Company, a better machine. I do not remember that the United Company withdrew any of its machines from us while we were operating the Bay State machines. We probably transferred the Goodyear machines to welt work. They withdrew no welt machinery or auxiliaries from us. I do not remember that we had any turn auxiliaries. The Bay State had no auxiliaries to their turn stitching machine that I know of. The Goodyear Company did not, so far as I know, furnish, in addition to the turn inseam machine, auxiliaries for turn work. As to whether there were not three or four, there may have been some of them bought outright. Our change from Bay State to Goodyear machines was in part because we thought we were getting a better machine. During the solicitation of us by the

United Company to take one of their Goodyear machines it came out that the Goodyear turn machine with this addition would do better work for us than the Bay State machine. They practically took our investment in the Bay State machines off our hands. They did not interfere then or afterwards with our using the Puritan stitcher or other machinery which did not belong to them on McKay work.

We discontinued the use of the Gem insole machine because for business reasons we began to use a different form of insole. We have been using the curved needle lockstitch machine trying it out on what is known as mock welt—for putting mock welts on McKay shoes. This was experimentally. We have found no other use for it. No auxiliary machines are supplied with it. We have a Goodyear machine which can be used for the same purpose. We have kept our Goodyear machines for stitching welt shoes.

260 JUNE 6, 1913.

CHARLES H. KRIPPENDORF, a witness for the United States.

My name is Charles H. Krippendorf. I am a shoe manufacturer, residing in Cincinnati. I have been in that business since 1871. In 1900 I was a director of the National Boot & Shoe Manufacturers' Association. In that year it had a conference with Mr. Winslow, at which Mr. James, Mr. Pingree, Mr. Schober, Mr. Reed, Mr. Rich, Mr. Drew, and myself were present. It was held at Philadelphia. A request was made of Mr. Winslow to eliminate the restrictive clauses from the new leases of metallic machines. Mr. Winslow replied that the prices which they charged for metallic material did not yield a satisfactory return for the investment and they could only sell metallic material at this price if the manufacturer used their welting and lasting machines, on which they received larger returns. Then the manufacturers told Mr. Winslow to make the price on material whatever he felt the circumstances justified and to give them the option to either use his machines or those of other parties. After discussion, he said, in substance, "We, in order to prevent competition, have to buy out competing machines, and we have endeavored to create a condition under which we don't have to pay more money for those machines than they are worth."

The statements of Mr. Winslow were taken down by a stenographer employed by the meeting. I have recently read over the minutes of the meeting to refresh my recollection. The meeting was held November 8, 1900.

Cross-examination:

I produce the notes of Mr. Winslow's statement. That is a stenographic report of what was said. It was taken down word for word as each person spoke.

261 Q. Can you turn to the part of the minutes which contains the statement which you have just given—namely, his reason for requiring the metallic fastening machines to be used with the lasting machines? That is, the reason that the price of the material was going up. Can you turn to that, sir?

A. It was a very long discussion. The minutes are contained in 108 pages—spread all over. I don't know what page that is on. I know Mr. Winslow stated——

Q. Have you been able to turn to the place where he gave his reason for requiring the metallic machines to be used with the lasting machines?

A. I looked it up and I refreshed my mind, but I don't remember now the account, except this 51.

Q. Have you been able to find the page or the part of the minutes which contained his answer to the manufacturers' suggestion that the machines be left independent and the price of the material fixed as circumstances requried?

A. Well, I think that branched off there. There was the whole meeting of 108 pages, and on page 51 he got down to making this statement.

Q. Page 51 is the page you find containing which statement?

A. The statement of Mr. Winslow that he endeavored to create a condition under which they didn't have to pay more money——

Counsel for the defendants then read page 51 from the notes, as follows:

262 "We want to work in harmony with you, but we have endeavored, perhaps egotistically or unwisely or in some other way, to furnish a condition by which we would not be obliged to pay $500,000 for some man's investment of $25,000. Now, if we had spent $500,000 for some man's investment, you gentlemen of the trade have to foot the bills, don't you? That is, a man comes along and said, 'I have a slugging machine. If you don't buy my slugging machine, I will put it out and make the terms so-and-so.' The machine is not a particle better, perhaps not so good as ours, but some man—perhaps our friend Reed—says, 'Well, that is good enough for my work, and I will put that in.' What are we faced with? He says 'I will sell you that machine for $50,000.' Do you want us to put you in the position of paying that man $50,000, or do you want to have your money spent where it will produce the most good and where we can make you the most reasonable terms, or don't

you? This is a great big question that we have here. As a matter of fact, we are endeavoring to run on certain lines and give you the largest service, the best service, the best machines in the world.

"Mr. DREW. Why do you have to purchase that machine?

"Mr. WINSLOW. Why? Well, let me ask you if we haven't got either to purchase that machine or compete with the man who is simply doing that to force us to buy? This John Smith don't care a continental. He says, 'Here is a fellow doing a decent business. Now, I will cut into that business if he don't buy it.'"

Q. Is there anything else in those minutes which forms a basis for your direct testimony, Mr. Krippendorf?

A. I don't know what you mean by that question.

Q. Well, your direct testimony is the testimony you gave in answer to Mr. Fowler. Is there anything else in the minutes that is a basis or a justification for your testimony in answer to Mr. Fowler's question?

A. I really don't remember now if there is.

263 JUNE 6, 1913.

JOHN E. WILLIAMS, a witness for the United States.

My name is John E. Williams. I reside in Portsmouth, Ohio. I am a shoe manufacturer, making boys' and men's welts and McKays. We have four factories located at Portsmouth and Ironton, two in each place. In Ironton we make boys' Goodyear welts and boys' mock welts. We make men's Goodyear welts in Portsmouth.

A mock welt is a shoe in which the welts or the full tuck are McKay sewed and then the outer sole is fastened on the stitching machine, preferably a lock-stitch machine. It is practically the same as the McKay fair stitched shoe except that in the mock welt the lockstitch machine is used, in the fair stitch invariably a chain-stitch machine. You can make the McKay mock welt with the same machine, except as to the outsole stitching machine that fastens the outer sole to the welt, that you use to make McKay fair stitch shoes.

At the present time we use the United Shoe Machinery Company's bottoming-room machinery in our factories, exclusively. Last fall we installed a Union lock-stitch machine in one of the Ironton factories.

(The following testimony regarding the Union lockstitch machines in witness' factories, etc., was introduced subject to defendants' objections and exceptions.)

The first machine we obtained from the Union Lockstitch Company was a curved-needle machine. We got it along in

August, 1912, and it was installed at the Boy Scout plant in Ironton. At that time we had a machine from the United Company for doing similar work. I first talked with Mr. King in Boston in November, 1912. I had one Union lockstitch machine at that time, and contemplated installing additional machines in the new factory. I asked him what objections he would have to our installing the Union lockstitch machines in our factories. I asked him, as we paid royalty on the other machines, why I couldn't use, as in my judgment I thought I had a right to use, some other stitching machine. After two or three days' conversation regarding the matter, he finally said,

264 "Mr. Williams, under the leases we feel that you have broken your obligation and would ask you to discontinue it." I did so. I asked Colonel King if there was any way in which their company would allow us to choose our machinery and finally he said there was a plan by which we could install or have the choice of their machines or others in certain places. He said he would send us a plan on which we could do this. Thereafter Mr. Ross, western manager for the United Company, came to Portsmouth and told us the plan on which we could do it. He made us a proposition that we could use the Union lockstitch machines by paying certain prices and royalties for their machines that we would use.

I produce a memorandum which Mr. Ross made out for me at that time, showing what the amounts of installation charges and royalties would be. I read from the memorandum. This is the initial cost for the pulling machines, etc.:

"Pulling Department:	
"Rex assembling machine	300
"Rex pulling machine, model A	750
"Rex rotary pounding machine	300
"Lasting Department:	
"Boston tacker	150
"C. H. M. Laster	300
"Metallic Department:	
"Wire grip tacker, including knife grinder	75
"Loose Nailing machine	250
"Loose Nailing machine No. 2	500
"Universal Slugger, including knife grinder	250
"Heeling Department:	
"No. 4 compressor	500
"Lightning heeler	250
"McKay heel trimmer, including knife grinder	150
	3,675

"Pulling royalty one-half cent per pair net.
"Compressor royalty one-eighth of a cent.
"Clicker lease probably one-half to three-quarters of a cent."

I understood this to call for extra royalties of one-quarter of a cent on the pulling-over machine, and one-eighth of a cent on the heel compressor. The clicker royalty was also extra. We pay no direct royalty on that machine, but buy all our dies for that machine from the company.

265 The installment prices and extra royalties were only for one factory with a daily capacity of six or eight hundred pairs. The extra royalty was about one and one-eighth cents per pair in all for a factory in which six hundred pairs per day was the average output. We had been paying a cent and a half per pair royalty on machines leased from the United for performing work similar to that performed by the Union lockstitch machine, which would be nine dollars per day on 600 pairs, and, for the year of three hundred working days, twenty seven hundred dollars. That would be on one machine if that machine had that full output.

On the Union lockstitch machine we were to pay no royalties. We were to pay seven hundred and fifty dollars—or $1,000 for that machine at that time, then it was to be ours. The United machines were leased for seventeen years. I couldn't say we would average 600 pairs for 300 days in the year on one machine. The average output of this shoe is possibly about 400. That would be a royalty of $6 per day and 300 days would be $1,800 per machine. We returned the Union machine which we had. We had contemplated ordering two more. At the present time we have no bottoming machines except those of the United Company.

Cross-examination:

At the time I talked with Mr. King we had a factory in Ironton where we were using United machines and we were thinking of opening a new factory at Portsmouth, and I wanted to know for how much the United Company would equip it on the assumption that we would use Union lockstitch machines there. The memorandum of initial charges referred to in my direct examination refers to equipment to be furnished by the United Company for this new factory on that assumption.

I also talked with Colonel King about the lockstitch machine already in our factory and he told me he thought our use of it was in violation of our leases, and asked me why I thought I

266 had a right to install it. I already had the Goodyear rapid lockstitch machine on a lease which required no initial premiums and on which the company received income only according as I used it. I told him that as I thought I paid royalty on all his machines, had none of the auxiliaries whatever

in the construction of this shoe—that every machine, practically, directly or indirectly brought a royalty—if a new condition or new shoe arose it seemed to me I had a right to use the machine. There was here a new kind of shoe in which the channeling machines and the other auxiliaries were not used. I would use lasting, clicking, pulling-over, heeling, and the lockstitch machine. It was my suggestion that on a shoe like that I should be allowed to put into this series somebody else's machine and not use the Goodyear lockstitch machine.

There is an indicator on the Goodyear lockstitch machine to keep a tabulation of the number of pairs of shoes operated upon it. Putting in the Union machine would leave the Goodyear lockstitch machine idle. Colonel King's final reply was that it would be in contravention of our leases. He said that with the initial premium form of lease we could use our lockstitch machine as much as we wanted to.

The memorandum of the new charges as proposed by Mr. Ross says, "Pulling-over royalty one-half cent per pair." That embraced three machines, the Rex assembler, the Rex pulling-over and the Rex rotary pounding. The regular royalty on our leases without initial premium was one-quarter of a cent a pair on the assembling machine and one-quarter of a cent a pair on the pulling-over and rotary together, making one-half a cent on the three machines. This is the same as was to be paid for the three machines under the initial payment form, if I use an assembler, otherwise it is one-quarter. There is a royalty of one-eighth of a cent on the heel-compressing machine, but it is now absorbed in the royalty paid on the heeling machines, and therefore I do not pay it under my present form of lease. There is no royalty on the clicker for use on an
267 ordinary welt shoe when used with the Goodyear welter and stitcher—either nothing or it is absorbed in the royalty paid upon the machine which kept count of the operation. So far as I know the company had never had occasion to fix any royalty on its clicking machine for use in making mock welts. I wrote the letter which you hand me.

(Letter dated Portsmouth, Ohio, February 25, 1913, from the Excelsior Shoe Company, by John E. Williams, to Colonel King, United Shoe Machinery Company, is marked "Dfts. Exht. 43," and reads as follows:

"PORTSMOUTH, OHIO, *Feb. 25, 1913.*

"COLONEL KING, United Shoe Machinery Company,

Boston, Mass.

"DEAR SIR: Your Mr. Ross, jr., of Cincinnati, was here and we spent the most of a day in going over our proposition for the

new factory, and he stated the conditions on which the company would allow us to equip our new factory with any machinery that we desired in same.

"We find upon taking the cost of your machines and what royalty we would pay and the rate of interest and depreciation, that even if we could save on the royalty it would be a question whether there was any profit, and as far as we can figure there would possibly be about $1,000.00 to our advantage in a year, or perhaps a little over. We do not feel that this is interesting enough as a business proposition, and told your Mr. Ross that we would go ahead equipping the factory with your machinery, but the writer thinks that this would be an ideal plant, as we believe we are really organizing economically in any line that would show a saving, as we believe in the next year or two all American shoes will come in severe competition with English and German made shoes, as the tendency at Washington is to take off the tariff.

"As this plant is to make only two or three shoes in a mock welt, and is particularly adapted to boys' shoes and nothing but this one style shoe will be made there, and as we expect to equip fully with your machinery, why would it not be in line to take this plant and your company use it as an experiment towards a new relation of royalty? For instance, if the Excelsior Shoe Company makes just a certain shoe in style and grade under certain conditions, and does not branch out into all styles and different constructions in this factory, why should we not be entitled to a plan something like the following—that we should be given a flat rate for the making of shoes under this head and conditions, probably showing a saving of, say, half a cent a pair over the old basis?

"We feel that with some encouragement on this line that the general income of your machinery in that plant will average more than the general plant in running this plain simple line,

and everything being done to produce quantity easily so

268 that what machinery was there would even yield more income than machines in the plant, where all styles and the general line of work is done.

"We feel that in doing this you would show an interest, as you have always professed, in the manufacturer, and would also encourage a line of goods that would always keep the American shoes, even with free trade competition, possibly on the fighting line.

"There is no fear of a precedent in considering this question, as we do not think there is another plant like it at present in the

country, and we could almost assure you that the aggregate of the machinery in this plant even with a reduced flat rate would yield more than the average equipment that you have in another plant running a regular line.

"We presented this matter to Mr. Ross, and he thought it was interesting, as I showed him in a way what we expected to do there, and as you have always stated that the company wished to do something to show that they were interested in the manufacturer in keeping costs down when they could feel they were safe in doing so, we felt that in presenting this proposition we have really opened up a way for the company to cooperate.

"Trusting to hear from you at an early date, as we will soon be ready to start, we remain,

"Yours, very truly,

"THE EXCELSIOR SHOE COMPANY.

"JNO. E. WILLIAMS.

G M".)

We kept the Union machine about sixty days. We never tried it on a real welt shoe.

In none of my letters to Colonel King did I make any complaint about any restriction upon the use of the Union lockstitch machine, but I really wanted to use it if I was right in my judgment that I had a right to do so under the leases. I am not a member of the Shoe Manufacturers' Alliance. I am interested in the Boylston Manufacturing Company to the extent of about five or six thousand dollars. Mr. Louis D. Brandeis asked me to come here, by telegram, week before last. Telegram said "Imperative you should be here to testify."

Mr. GREGG. In that connection I wish to state, if the court please, as the court well knows, in these civil proceedings we can not bring witnesses more than a hundred miles, and we wanted to save time by bringing the witnesses here if they were willing to come. I knew that Mr. Brandeis had represented the western alliance in a way, and I asked him myself if he would communicate with these men to see if they would be willing to come here and testify and thus save the time and labor of going out over the country and taking their testimony by deposition.

Direct examination resumed:

When talking with Colonel King in Boston I had the Union lockstitch machine running in my factory. I had United Company machines at that time. Col. King did not say anything at that time about changing my system of leases.

(Objected to by defendants on the ground that no such subject was opened up on cross-examination.)

269 JUNE 6, 1913.

WILLIAM A. HOGAN, witness for the United States.

My name is William A. Hogan, and I live in Brockton, Mass. I am a shoe manufacturer. I am part owner and treasurer of the T. D. Barry Company. I have been with that company about twenty-five years and treasurer four years. I was an office man and had nothing to do with installing machinery, but I had charge of the factory in the absence of Mr. Barry, who was formerly president of the company. We have two factories in Brockton with a capacity of from three thousand to thirty-five hundred pairs. We had machines from the Standard Shoe Machinery Company about thirteen or fourteen years ago. I am not sure whether it was before or after the United was formed. We had trouble with the United Company with relation to the use of these machines about that time. The trouble was with the United Shoe Machinery Company. At that time we were using United machines and also Standard Shoe Machine Company machines. We had a laster, welter, stitcher and welt beater, and I think a sole-layer from the Standard Company, and machines for similar work from the United Company. One afternoon while Mr. Barry was in Europe the deputy sheriff in Brockton served papers on us that they were going to take out some United Shoe Machinery Company machines. I asked the sheriff for time to see my attorneys, which he granted, and we got an injunction in the Superior Court on those machines. A few days after that—while I was away from the factory—another sheriff attempted to take out some other machines. When I came back I found him in the making room and I stopped him from taking them out by threatening to shoot him. After that I saw my attorney and went to Boston and saw Judge Mason and got an injunction on the company on the second lot of machines, and later I was ordered to appear in the Superior Court in Boston for threatening the sheriff I suppose; the injunction was dissolved.

270 Then I went to see Mr. Storrow and agreed to stop the machines from the Standard Company until Mr. Barry got back. When he came back he handled the matter. The Standard machines were removed from the factory and put in a storehouse of ours, if I remember rightly. I do not know where they are now or whether the Standard Company is still in business. Prior to the time the sheriff came I don't think I had any conversation with any representative of the United Company; I wouldn't say yes or no because I don't remember. About that time we had about ten United machines to one Standard. I wouldn't say whether the United Company's machines were removed at that time or not. I don't remember. The

factory was busy at the time of the occurrence. I can't remember the substance of the conversation with Storrow. I went to see him because I assumed that the machines were going to be taken out and I did not want them taken out. I wouldn't say that I had any conversation with him about the Standard machines. The Standard machines were not replaced by United machines or by any other machines. We got along without the use of them.

Cross-examination:

I was an office man at the time of that occurrence. Mr. Barry was at the head of the factory and it took place in his absence. The T. D. Barry Company had some machines which it had leased from the old Goodyear Company before the United Company was formed, including welting and stitching machines and also some auxiliary machines that were used with the welting and stitching machines. Some Standard welting, stitching, and lasting machines were introduced into the factory. We did our welting and stitching on the Standard machines and used the Goodyear machines we had for the auxiliary work for those machines.

Q. So that you were getting the Goodyear auxiliary machines for nothing and using them on shoes that were welted and stitched on the Standard machines; isn't that a fact?

A. That is the fact; yes, sir.

Q. Which really was not very fair under your leases, was it?

A. Well, we were not making many shoes on them.

Q. But you were getting the use of your auxiliary machines and not paying anything on them?

A. There was practically only one auxiliary machine under those conditions.

Q. I am not debating how much you were doing, but that is what you were doing?

A. Yes; that is correct.

Q. And in that situation you were notified that if you did not care to use the Goodyear machines for that purpose the company would like to take them back?

A. I won't say about the notification, because I don't remember it.

The United Company brought a replevin writ to get their machines back and that was the time when the officer came.

When Mr. Barry came home, the matter was straightened out.

271 Q. And you went on using your Goodyear machines in accordance with the terms of the leases in entire peace and harmony?

A. Yes, sir.

Q. And you have had no trouble with the United Shoe Machinery Company since?

A. Absolutely none.

We have taken machines of them and we have had good service. We have found their machines satisfactory. We make men's welt shoes and a few ladies'. We have about five hundred machines, more or less, in our factory. All the machines used in making the uppers were obtained from manufacturers other than the United Company. A good many machines used in the finishing room can be obtained from other sources. In our particular case they are.

Direct examination resumed:

We use exclusively welters, stitchers, lasting, heeling, and metallic fastening machines obtained from the United Company.

272 JUNE 6, 1913.

RICHARD H. LONG, witness for the United States.

Q. What is your full name?

A. Richard H. Long.

Q. Where do you reside?

A. Framingham.

Q. In what business are you engaged?

A. Shoe manufacturing. Machinery.

Q. Shoe machinery?

A. And retail shoes.

Q. How long have you been engaged in business as a shoe manufacturer?

A. I went to work in a shoe factory in 1880 and was engaged in 1886 as an employer.

Q. And when did you engage in business for yourself?

A. 1886.

Q. What is the name of your shoe manufacturing company?

A. Framingham Shoe Company.

Q. What is the name of your shoe machinery company?

A. R. H. Long Machinery Company.

Q. Do you have more than one shoe factory?

A. No, sir.

Q. What is your daily capacity?

A. Five or six thousand pairs.

Q. What kind of shoes do you manufacture?

A. Welt shoes.

Q. Welt shoes exclusively?

A. Almost exclusively.

Q. What kinds of shoes do you manufacture outside of welts?
A. Make a few McKay shoes—McKay sewed shoes.
Q. Where were you engaged in business at the time of the formation of the United Shoe Machinery Company?
A. In Springfield, Massachusetts.
Q. What machines were you using at that time?
A. Using machines from——
Q. Take the welt sewing and out-sole stitching machines—whose machines were you using?
A. From the Eppler Welt Machinery Company principally. I think we may have had some Goodyear machines—I am not sure of that.
Q. Those are the only two?
A. On welt-sewing machines. We made a few welt shoes in which the welts were sewed with a McKay machine.

273 Q. Where did you obtain the McKay machine?
A. That was bought in the open market of machinery dealers, not machinery manufacturers.
Q. And whose lasting machines were you using at that time?
A. We used the Chase lasting machines at that time.
Q. Exclusively?
A. I think we had one or two Consolidated.
Q. Now, going back to the welt-sewing machines, what royalty were you paying for the Eppler machines?
A. Three cents per pair on men's shoes.
Q. Did you use that machine on women's shoes?
A. We did not make women's shoes. We made some boys' shoes, and it was two and one-fourth cents per pair on boys' shoes.
Q. What royalties were you paying on the Goodyear machines for similar work?
A. Four cents on the men's shoes and three cents on boys'.
Q. At the time of the formation of the United had you bought these lasting machines, or did you lease them?
A. Those lasting machines were installed on a lease.
Q. Whose heeling machines did you have at that time?
A. We had heeling machines from either the McKay & Bigelow Company or the McKay Machinery Company, and we had, I believe, one or two National heeling machines.
Q. And did you have any American heelers?
A. No, sir.
Q. From whom did you obtain your metallic machines at that time?
A. We obtained the metallic machines from a man named Locke who lived in Hudson, and we had some metallic machines

from the McKay Shoe Machinery Company or the Metallic Fastening Association.

Q. Now, after the formation of the United Shoe Machinery Company did you continue to use your Eppler machines?

A. We did as long as we could get parts for them.

Q. After the United was formed where did you have to go for your parts for the Eppler machines?

A. To the United Shoe Machinery Company.

Q. What difficulties did you have, if any, in obtaining parts for the Eppler machines?

A. Parts weren't supplied promptly when we ordered them from the United Company and the machines were idle.

Q. What difficulty, if any, did you have in obtaining parts for Goodyear machines?

A. We didn't use the Goodyear machine at that time.

Q. You didn't have any Goodyear machines?

A. We weren't using any Goodyear machines.

Q. Did you have them?

A. We did have some Goodyear machines under lease, and at that time we had just moved from the factory at Belchertown and in that factory we had Goodyear machines, and whether or not those machines had been transferred to somewhere else I don't know, but I think the machines were still in our possession.

Q. Now, did you have any interview shortly after the United was formed, with any representative of the United Shoe
274 Machinery Company, with respect to the continued use of the Eppler machines?

A. I did.

Q. With whom?

A. With Mr. Frederick G. King, the manager of the Goodyear department.

Q. Will you please state the substance of the conversations you had with Mr. King in regard to the Eppler machines?

A. I had a number of interviews with Mr. King. When the machines were idle in the factory and I couldn't get parts promptly I requested him to send us parts; called at his office in Boston, and among other things was told by Mr. King that they had decided not to put out any more Eppler machines, and the service on Eppler parts wouldn't be as good as it would be on parts of Goodyear machines. I told Mr. King that when I ordered the Eppler machines from Mr. Payne, the agent of the Eppler Company, that they agreed to furnish us parts and such additional machines as we would want to use in our factory, and I thought his company ought to carry out the agreement of the Eppler Company; also those machines were furnished with-

out any initial payment, while the Goodyear charged $300 each for the principal machines for that system. Then the Eppler machines were furnished with a royalty of twenty-five per cent less, and I demanded that he furnish parts that we needed to keep our factory in operation. He said that they wouldn't furnish any more Eppler machines for us, and they would give us whatever service they could conveniently. He said to me if I wanted to stay in the shoe business, it would be well for me to fall in line with their plans for supplying machines to shoe manufacturers; that they knew better than the shoe manufacturers the different kinds of machines required in shoe factories, and it would be well for me, if I wanted to stay in the business, to follow along their lines, ——

Mr. CHOATE. Pardon me a minute. Now, this is another instance of a case, I think, where in all fairness we ought to have been given these particulars.

PUTNAM, J. This is not an instance of a threat, Mr. Choate.

Mr. CHOATE. Well, it seemed to me that was the very purpose for which it was offered. Isn't that your idea about it, Mr. Gregg, that you offer it as a threat?

Mr. GREGG. No, I don't offer it as a threat.

Mr. CHOATE. What do you call it?

Mr. GREGG. I offer it as a statement of Mr. King to Mr. Long of the policy that the company proposed to pursue.

Q. Had you finished your answer?

A. That I had been too independent and kicking too much. I told Mr. King that I wanted to use those Eppler machines and intended to use them. I had a number of conversations, interviews, with him.

275 Q. Why did you give up the Eppler machines?

A. The United Company failed to supply parts for them.

Q. And in their place what did you take?

A. I had another interview with him in my office, Boston office, and I arranged to return the Eppler machines that I had, taking Goodyear machines in exchange for them. They allowed a credit of the amount that they charged on the different Goodyear machines of the same type, the amount of the initial payment, and we took the Goodyear machines under their Goodyear leases that were in existence at that time, with initial payment.

Q. Now, the Goodyear machines that you obtained in place of the Eppler machines were used for performing the same work that you had performed with the Eppler machines?

A. Same work; yes, sir.

Q. Now, about the time that you had these conferences with Col. King in regard to Eppler machines, did you have any conversation with Assistant General Manager Wilson of the United?

A. About that time or before.

Q. And what was the substance of the conversation that you had with Mr. Wilson?

A. My conversation with Mr. Wilson first related to lasting machines.

Q. Well, what conversation did you have with him about the lasting machines?

Mr. CHOATE. Will you fix the time?

Q. About when was that, Mr. Long?

A. That was about 1899 or 1900.

Q. Shortly after the United was formed?

A. Shortly after the United was formed.

Q. Now, you may proceed with your answer.

A. I wanted some additional lasting machines of the type that we were using.

Q. What type were you using at that time?

A. The Chase lasting machines—and they refused to supply them.

Mr. CHOATE. Pardon me a minute. Is that what Mr. Wilson said?

Q. Well, what did Mr. Wilson say about furnishing you with Chase lasting machines, additional lasting machines?

A. Mr. Wilson refused.

PUTNAM, J. Now, Mr. Gregg, I am coming back at you again. You have alleged that this defendant corporation acquired all those machines.

Mr. GREGG. Precisely.

PUTNAM, J. They admit that they acquired them. What do you want to prove by this witness?

Mr. GREGG. I am attempting to show by this witness that one of the machines they acquired through this combination was later on withdrawn from the market, just the same as the Eppler's.

276 PUTNAM, J. They had a right to withdraw it, didn't they? Don't the bill allege it and the answer admit it?

Mr. GREGG. We are also attempting to show by this testimony that these machines that went into the combination at the time the United was formed were competing machines.

PUTNAM, J. But your bill alleges that combination was legal.

Mr. GREGG. I beg pardon, your honor. I don't think our bill alleges that the combination was legal. It is just to the

contrary. Our bill alleges on page 17 that the defendants, naming them, or naming a number of them: "not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States and of other countries, which they had enjoyed for many years."

PUTNAM, J. That is the precise combination the Supreme Court of the United States passed on and held to be a legal combination. But, at any rate, legal or illegal, you are not showing anything now except that the defendants performed an allegation of your bill, and upon the answer had a perfect right to do it.

Mr. GREGG. No doubt they had a perfect right to withdraw them from the market. I am merely attempting to show by this witness that one of the competing machines that they took over at that time was later withdrawn from the market.

The WITNESS. Mr. Wilson refused to supply any more Chase lasting machines and said that the machine they were to put out was the Consolidated.

Q. From whom had you obtained Chase lasting machines?

A. Obtained them from the Chase Company originally, and I believe later some of them were from the company that absorbed the Chase.

Q. Now, was anything further said by Mr. Wilson at that time?

A. I had other conversations with Mr. Wilson. I couldn't say whether it was all at that time or not.

Q. Was that in regard to lasting machines, too?

A. Yes. I had been requested to sign a new form of lease of the United Company relating to machinery, and I refused to sign it, saying that I wanted to continue under the old form of lease.

Mr. CHOATE. A lease for what?

Q. A lease for what?

A. Whatever they were to lease—a lease of the Eppler Company or the Chase Lasting Machine Company or the McKay & Bigelow Heeling Machine Company.

Q. Well, which one was the subject of this conversation, if you recall, with Mr. Wilson?

A. Well, Wilson and I talked in relation to the lasting machines and also in relation to the welting machines.

Q. You may proceed and state what he said.

A. He said they wouldn't furnish me any more Chase lasting machines; that we would have to use the Consolidated. I told him I wanted a Chase and wouldn't use a Consolidated.

unless I was forced to use it. He said I would be obliged to in order to get any more machines, and later I signed the lease of the Consolidated machine.

Q. Did Mr. Wilson say anything to you at that time about the control of shoe machinery?

A. Mr. Wilson said at the first interview I had with him that his company intended to manufacture all the machinery that was used in the United States for bottoming shoes.

277 Mr. CHOATE. Of course I have been protesting against this testimony from the very time it began to be offered from all these witnesses, but the court has constantly overruled me, and I didn't want to be on my feet all the time. I have objected particularly where the statement did not come from Mr. Winslow, or a person of equal authority, or of approximately equal authority. Here was a talk with Wilson, who was one of the assistants to the general manager, away back in 1899 or 1900. This witness is purporting to state Wilson's declaration of the company's policy. I submit that Wilson had not any right to speak for the company with respect to its policy at that time. We are not bound by what Mr. Wilson's views were about the company's policy. We are not to be punished for what his views may have been.

Unless he was speaking for the corporation, with the right to state what the corporation meant to do, I don't see why it should be admitted.

PUTNAM, J. We will let it in under the ordinary rule, Mr. Choate, subject to your exception.

Q. Was that all he said at that time?

A. No. We had an interview of perhaps fifteen or twenty minutes.

Q. Tell the substance of what was said.

A. That they had their plans for the machinery for shoe manufacturers and expected the manufacturers to use the kind of machines that they advised them to use. We talked of the lasting machines. At that time we were using the Chase machine, and he explained how the Consolidated machine, in his opinion, was very much better than the Chase, and they didn't intend to furnish the Chase machine to shoe manufacturers. I told Mr. Wilson that I preferred to use the Chase machine and thought it was better for our work than the other. He said that we couldn't have any more Chase machines; we would have to use the Consolidated or go without.

Q. Prior to the time you had this interview with Mr. Wilson, had these new leases been presented to you?

A. Leases had been submitted by an agent of the United Shoe Machinery Company.

Q. Who was the agent, do you know?

A. I think his name was Shaw. He was a lame man; I am not sure of his name.

Q. Were the new forms of leases submitted to you by an agent at your factory?

A. Yes, sir.

Q. Before you came to Boston?

A. Yes.

Q. Then you came into Boston and interviewed Mr. Wilson and Mr. King before the signing of these new forms of leases?

A. Yes.

Q. When did you first engage in the shoe machinery business, Mr. Long?

A. About the first of the year 1907.

278 Q. Could you procure shoe machinery, that is, a line of shoe machinery, from any concern except the United, without making it yourself?

A. No, sir; not a complete line.

Q. When did you perfect your line of machinery?

A. It isn't perfected at the present time.

Q. When did you get sufficient machinery together to install in your factory to manufacture shoes?

A. February, 1907.

Q. Was that your own machinery?

A. No, sir.

Q. Whose machinery was that?

A. Machinery bought from different machinery dealers and machinery manufacturers.

Q. Did you install that machinery in your factory at that time?

A. I did.

Q. What did you do with the United machinery?

A. The United machinery was set aside.

Q. Do you know where it is now?

A. It is on storage in a factory building in Framingham.

Q. Is that machinery which you installed in February, 1907, in operation in your factory now?

A. It is in part.

Q. And a part of the machinery now in operation has been developed by you since that time?

A. Since that time; yes, sir.

Q. Are you engaged in placing machinery among other shoe manufacturers; that is, shoe machinery?

A. Trying to; I am to a small extent.
Q. Will you please state briefly the machines that you manufacture?
A. We manufacture machines for lasting and welting and stitching—sole stitching—leveling, heeling, some metallic fastening machines, and a number of others.
Q. Are you using any of the United Shoe Machinery Company's machines at the present time?
A. Not that have been procured from them. There may be some machines in use in the factory that have been bought from machinery dealers or others, that have been made by them.
Q. None that you have obtained directly from the United Shoe Machinery Company?
A. No.
Q. Have you made any efforts to place your machinery among shoe manufacturers?
A. I have.
Q. To whom have you offered machinery, Mr. Long?
A. I have advertised the machines for sale in trade papers, sent agents to different shoe manufacturers, written letters to them, and called on them personally trying to sell machines.
Q. Whom did you call on personally?
279 A. I called on Mr. Taylor, of the Taylor Shoe Company, of Lynn.
Q. Did you sell Mr. Taylor any machines, or lease him any?
A. I sold him some machines.
Q. What machines did you sell Mr. Taylor?
A. Sole welting, stitching, some metallic machines.
Q. Do you know whether or not Mr. Taylor is using the machinery of the United Shoe Machinery Company?
A. He is not.
Q. Whom else did you call on?
A. I called on Mr. A. E. Little, of Lynn.
Q. Did you sell Mr. Little any machinery or lease him any?
A. No, sir.
Q. Did you have any negotiations with Mr. Little in reference to the sale or lease of any machines?
A. No negotiations, except to say I would like to sell him machines.
Q. Did Mr. Little make any reply?
A. He said he couldn't use the machines because of his leases. That was the substance, not the exact words.
(Admitted subject to defendants' objection and exception.)
Q. Did you call on any other shoe manufacturers?

A. I called to see a number of them that were at our machinery factory at Framingham, a large number, perhaps seven or eight or a dozen, from Haverhill.

Q. Who were they?

A. Mr. Dobbins, Mr. Hilliard of Hilliard & Taber—I don't recall the names of the others, but there were quite a large number of them.

Q. To whom have you actually sold machines?

A. The machines we have sold have been largely to cobblers—shoe repairers.

Q. How many machines have you sold to shoe manufacturers?

A. Fifty to one hundred.

Q. What were they, welters or stitchers?

A. Some of each and some other machines.

Q. Do you know whether or not any of those machines are in factories where the United Shoe Machinery Company's machines are being used?

A. There are some of them.

Q. Whose factories, if you can name them?

A. There is one factory in western Massachusetts.

Q. Can you give the name of it?

A. I can not; I don't recall.

Q. Where is it located?

A. I don't know the name; it is a small town near Holyoke.

Q. Any others?

A. That is the only one I recall now—yes, I sold some to J. L. Walker & Company, of Lynn.

Q. Did they pay you for the machines?

A. Those were sold through Maurice Bresnahan, of Lynn. He paid us for the machines.

280 Q. Do you know whether or not Walker & Company are using those machines now?

A. I have been informed that they are not. Walker told me that they are not.

Q. Mr. Walker told you they were not?

A. Yes.

Q. Do you know what was done with the machines?

A. He said he had set them aside.

Q. Mr. Long, have you ever been refused credit at any banking institution on account of the fact that you are engaged in the shoe machinery business?

Mr. CHOATE. I pray your honor's judgment.

PUTNAM, J. You will have to give notice of that in the bill of particulars before you go into it.

Mr. GREGG. Then I would like to reserve the right to recall this witness to examine him on that point, because I expect to connect that with other witnesses.

PUTNAM, J. That is all right enough. You will have to give them notice in season.

Mr. GREGG. We will do that.

Q. Mr. Long, what is the market price of your machines, your welters—welt machines?

Mr. CHOATE. I pray your honor's judgment on that question.

PUTNAM, J. I can't see the propriety of that myself.

Mr. GREGG. If your honor please, it does seem to me that it is very important, where these machines are sold outright and sold for a given price, and where they are held on lease——

PUTNAM, J. What do you want to prove, Mr. Gregg, by that line of testimony?

Mr. GREGG. I want to prove this, that the difference in cost to the shoe manufacturers between the machines that are sold outright by these independent shoe machinery manufacturers and the royalties exacted by the United Shoe Machinery Company, from the shoe manufacturers for machines for performing similar work, is so vast in amount that it does become material for the Government to show that if the independents have an opportunity to place their machinery in shoe factories the shoe manufacturers will get the benefit of the cheaper machinery.

PUTNAM, J. How are you going to make a comparison? Let us find out what you are driving at.

Mr. GREGG. We expect before we get through, if your honor please, to prove, if possible, what it costs the United Shoe Machinery Company to manufacture their machines for doing similar work.

PUTNAM, J. You expect to prove what?

Mr. GREGG. What it costs the United Shoe Machinery Company to manufacture their machines for doing similar work; and then to make the comparison between the prices charged
281 by the independents and the royalties and the installation charges exacted by the United Shoe Machinery Company. It seems to me that that does become very important.

PUTNAM, J. I don't quite understand you now. You are going to show what these independent manufacturers ask for their machines, and then show what the United Shoe Machinery Company's machines cost?

Mr. GREGG. And what they exact in royalties from the shoe manufacturers.

PUTNAM, J. How are you going to make the comparison then?

Mr. GREGG. Why, as to the cost—I understand you sell your machine outright for $600, Mr. Long?

The WITNESS. Yes, sir.

PUTNAM, J. Let us have a full and fair statement of what you want to prove and see whether you can do it or not.

Mr. GREGG. My offer of proof is this:

PUTNAM, J. Not your offer of proof. Just give us your theory of what you are driving at generally.

Mr. GREGG. Here is an independent shoe machinery manufacturer who is putting out a welting machine for which he charges $600, and the shoe manufacturer, acquires title to it immediately. It belongs to the shoe manufacturer, and there is no additional royalty or anything of the kind. On the other hand, there is a machine for performing similar work put out by the United Shoe Machinery Company on a royalty basis for seventeen years, where the royalty for one year in many cases amounts to more than twice the cost of the machine put out by the independent, so that in seventeen years the amount of money that the shoe manufacturer pays will be appreciated.

PUTNAM, J. Have you any case of that kind so you can tell us exactly what it is?

Mr. GREGG. You mean to take any machine?

PUTNAM, J. No, no. Tell us what you are going to prove—describe the particular case as if you were opening to a jury.

Mr. GREGG. Take a welting machine or a stitching machine.

PUTNAM, J. No, no. Take just one machine.

Mr. GREGG. I was going to take a welter or a stitching machine; I will take the stitching machine.

DODGE, J. What particular stitching machine?

Mr. GREGG. An out-sole stitching machine.

PUTNAM, J. Take a particular machine and follow it through.

Mr. GREGG. An out-sole stitching machine.

DODGE, J. Any out-sole stitching machine, or some particular out-sole stitching machine?

Mr. GREGG. A machine that performs the operation of out-sole stitching. The machines that have been described here as we have been going along, in the Goodyear department, the two main machines are the welt-sewing and the out-sole stitching machine.

PUTNAM, J. You have got to take some definite and precise machine. We can't compare any machine with another machine generally.

Mr. GREGG. Machines for performing a similar operation.

PUTNAM, J. What sort of machine is this gentleman making?

Mr. GREGG. Out-sole stitching machines and sewing machines.

282 PUTNAM, J. Take one. What kind of a machine is it?

Mr. GREGG. Take the welt-sewing machine. He has just testified that the market price——

PUTNAM, J. No; what kind of a machine is it? Let us understand that, and see what he is making.

Q. What machines are you making, Mr. Long?

PUTNAM, J. No. Tell us. We don't want the witness to tell us. We want to know what you propose to prove. Take one specific machine. What sort of machine do you propose to take up, a welt-sewing machine?

Mr. GREGG. I will take up the welt-sewing machine.

DODGE, J. His welt-sewing machine?

Mr. GREGG. The welt-sewing machine he sells on the market for $600.

PUTNAM, J. What kind of a welt-sewing machine is it? Does it sew the Goodyear welt?

Mr. GREGG. I don't know whether you would call it Goodyear welt or not. It is a machine for sewing welts.

DODGE, J. How do you identify it? How are we to know the particular, exact kind of a machine it is? An exact description of the machine you are talking about is what I would like to get.

Mr. GREGG. If your honor please, I don't know that I can make it any more definite. We have had here since the case started numerous witnesses who have described welt-sewing machines and out-sole stitching machines and lasting machines.

PUTNAM, J. They have done it in a general way in another aspect. Now, you come to make a comparison of prices, and we have got to compare one machine with another identical machine.

Mr. GREGG. A machine which performs the same operation.

PUTNAM, J. That won't do at all.

Mr. GREGG. It may not lay the stitch in the same way.

PUTNAM, J. Whether it does the same operation or not, we can't consider generally. You have got to be precise now in making these comparisons.

Mr. GREGG. That is as precise as I can be at this time.

PUTNAM, J. For all we know, it may be a machine which may be enjoined the moment it is put on the market. For all we know, it may be a machine which will only perform one of two operations——

Mr. GREGG. I will ask the witness about that.

Q. What operation does your welt-sewing machine perform?

A. The same operation as is performed by the Goodyear welt-sewing machine.

Mr. CHOATE. I suppose he means by that that it sews the welts to the uppers.

Mr. GREGG. Precisely.

BROWN, J. The same output, the same rate of production?

The WITNESS. Yes, sir.

Q. You have used the Goodyear welt-sewing machine, have you?

A. Yes, sir.

Q. And your welt-sewing machine performs the same work?

283 A. The same work; yes, sir.

PUTNAM, J. Have the patents on welt-sewing machines run out yet; have they expired?

Mr. GREGG. We claim that all the basic patents on welt-sewing machines have expired.

PUTNAM, J. Have they expired, I ask you.

Mr. GREGG. I haven't made a personal investigation myself of that matter.

PUTNAM, J. How is he going to put his machine against a machine that is covered by a patent?

Mr. GREGG. It may be covered by patents, or it may not be covered by patents.

PUTNAM, J. We have got to know before we can compare them. Here is the Eppler machine covered by thirty-nine patents; or, rather, by a patent with thirty-nine claims in it.

Mr. GREGG. I don't want to get into the patent question.

PUTNAM, J. I know; but you are going to compare his machine with the machine in controversy here, and you have got to identify the two machines in some way so we can see that they are the same thing.

Mr. GREGG. The witness has just stated that the two machines perform the same operation.

DODGE, J. It does not follow that the machines are identical.

Mr. GREGG. Not that the machines are identical, if your honor please, but that they perform the same operation.

DODGE, J. That is too general, to my mind, altogether.

Mr. GREGG. A farmer might have two plows——

BROWN, J. If one can be substituted for the other, it seems to me to be enough.

Mr. GREGG. It would seem so, if one machine will perform the same operation as another machine.

PUTNAM, J. Not at all, in any sense of the word. These machines are covered by patents. They may perform the same operation, but the detail is different, and the detail is where the

profit is. A half a cent or a cent or two cents on the product of the machines destroys one machine and builds up the other.

Mr. GREGG. If your honor please, I should like to make a notation on the record that we have offered this.

PUTNAM, J. You may make a notation.

BROWN, J. I would like to ask Mr. Gregg if the bill contains an allegation of exorbitant prices on leased machinery?

Mr. GREGG. The bill alleges that the defendants have made enormous profits. It does not specify the machines; it alleges in a general way.

BROWN, J. I asked early in the case—I saw there was an allegation that exorbitant prices were charged for duplicate parts—and I think the response was that there was no allegation in the bill that the charges for leased machinery were exorbitant.

Mr. GREGG. There is a section in the bill charging excessive profits by this company.

BROWN, J. Excessive profits?

Mr. GREGG. By the defendants; yes, sir. I don't recall the section just now, but it is near the center or last part of the bill.

284 Mr. CHOATE. It seems to me that because they performed the same operation there is no more similitude than there would be between an Ingersoll watch and the best Geneva because they both keep time.

BROWN, J. Well, they have the same efficiency.

Mr. CHOATE. I don't think it follows at all from that. In the first place, there is no reason why the comparison should be made. There is absolutely no relation between the cost of building a machine and what is a fair price to charge for leasing it when it has got a patented idea. You are leasing the idea and not so much metal.

BROWN, J. That is on the supposition that the difference is between patented and unpatented machines.

Mr. CHOATE. That is a very decided distinction.

BROWN, J. You are quite right on that, but Mr. Gregg claims that these machines are not patented.

Mr. GREGG. Precisely. We claim that the basic patents have expired. We do not make the contention that there may not be a little appliance on that machine that has a patent on it. We claim the basic patents have expired.

DODGE, J. In order to deal with that question mustn't we know with definiteness and precision exactly what the machine is that is covered? Is it enough to say: "It does the same work"?

Mr. GREGG. I think so, if your honor please, if it does the work as effectively as another machine.

BROWN, J. If one is a practical substitute for the other and there is no question of patents——

Mr. GREGG. Of course, you might have a machine that would do the work in a way, but not effectively, and certainly in that case you could not make a comparison with a machine that was doing excellent work. That is certainly true enough; but, as I understand the witness to testify, the two machines perform the same identical operation and with equal effectiveness.

Mr. CHOATE. I suppose one might take two horses. Each could draw a carriage with equal effectiveness. One is an ordinary draft horse and the other is a very valuable race horse. But the fixing of the price of one does not determine the value of the other.

BROWN, J. It is only a question of what is sufficiency of proof. You have only got to establish the identity of the things.

Mr. CHOATE. But there is nothing yet to show that the two things are identical or that the charges are for the identical thing. Of course the question is, comparing the price at which Mr. Long sells the machine with the royalty that a machine earns which is leased by the United Company, embodying a great variety of ideas which are covered in whole or in part by patents, together with service, efficient repairs, replacements, and all that sort of thing.

BROWN, J. That is on your construction of the facts. Mr. Gregg contends it is a comparison between unpatented machines performing the same work with equal efficiency, so that one may be substituted for the other. It is a question on the state of his offer of evidence on this record rather than upon the state of the case as it will develop after you have put in your testimony.

Mr. CHOATE. Is it useful to make an assumption that is so contrary to the evidence the Government has already put in?

285 PUTNAM, J. My mind doesn't rest there at all. I take the ordinary case, proving to a jury that two things are alike. You must describe one thing in detail and describe the other thing in detail, and let the jury decide whether they are alike or not. You must describe them, either by this man or by an expert, in detail, and then we have got to decide when we have got the details. You can't prove the similarity of one thing and another in that way, simply asking the general question whether two things are the same in effect or anything else. You must describe each machine and then the jury will determine whether they are alike or not, not the witness. That is my trouble.

BROWN, J. That might call for almost impossible details, so as to make it impracticable.

PUTNAM, J. It may be impracticable, but that is the law. It is for the jury or the court to decide, not for the witness. They can call an expert to testify about these machines and then find out whether they are covered by patents or not, and all such things as that.

Mr. GREGG. I don't know whether this witness is an expert on shoe machinery or not. I should prefer to take that matter up with some other witness, and I will withdraw that question for the time being.

Q. Mr. Long, have you ever been approached by any representative of the United Shoe Machinery Company to purchase your shoe machinery company?

Mr. CHOATE. Wait. I object to the form of that question. It seems hardly necessary to put it in any such form as that or to leave it in the record in that way. If this man has ever had a talk with anybody that is competent, that can be testified to.

BROWN, J. Do you accept this amendment in form proposed by Mr. Choate?

Mr. GREGG. I will withdraw the question in order to move along a little.

Q. Has any representative of the United Shoe Machinery Company ever approached you with a view to purchasing your shoe machinery business?

Mr. CHOATE. I pray your honors' judgment. That is exactly the same question.

BROWN, J. What is there opprobrious in the word "approach"?

Mr. CHOATE. To everybody's mind it has a sort of sinister sound—improperly approached that is the meaning it imports.

BROWN, J. Say "called upon."

Mr. GREGG. Well, we will put it that way.

Q. Has any representative of the United Shoe Machinery Company ever called upon you with a view to purchasing your shoe machinery?

Mr. CHOATE. I object to the last part of it. Why can't he state any conversation he had with any proper person, and then let us see if that is the purpose of it. It is putting into the question what ought to be in the answer.

Mr. GREGG. He has had numerous conversations with representatives of the United Shoe Machinery Company. I am coming now to the point whether he has had conversations with——

Mr. CHOATE. You doubtless know the name of the person you have in mind with whom he has talked.

Mr. GREGG. No; I haven't.

BROWN, J. I think the objection is hypercritical. I think it is a fair enough question.

286 Mr. CHOATE. I should like to have our exception saved to it, sir.

Q. Answer the question, Mr. Long.

A. I think I have. I was invited——

Q. Who talked with you about it?

A. Mr. Bresnahan—Maurice Bresnahan, of Lynn.

Q. When?

A. Several times. The first conversation was an invitation by telephone to visit the factory of the United Shoe Machinery Company at Beverly.

Mr. CHOATE. Will you pardon me a minute? Now, does your honor see how that leaves the record?

PUTNAM, J. I can't see that that has anything whatever to do with the case. If any one of the judges thinks it has, I am perfectly willing to listen to it.

Mr. CHOATE. I don't think it has, either, sir, but I was appealing to Judge Brown's suggestion that my objection was hypercritical. Doesn't the question and answer leave it this way—that on this witness's testimony Bresnahan was the representative of the United Company; that he called upon him as that representative, and that he called upon him with a view to purchasing this property? If those questions and answers are written out, that is what it amounts to. Now, I say it is hardly fair to prove any fact, if there is such an existing fact against us, in that way, and to suggest that it can be met by cross-examination.

PUTNAM, J. Why, Mr. Gregg, did he buy any property of Mr. Bresnahan—this witness?

Mr. GREGG. No, sir. I am not trying to show that.

PUTNAM, J. What are you trying to do?

Mr. GREGG. I am trying to show that Mr. Bresnahan, a representative of the United Shoe Machinery Company, called upon Mr. Long and discussed with him the question of purchasing his shoe machinery business.

PUTNAM, J. It didn't come to anything, did it?

Mr. GREGG. No, sir; it didn't.

PUTNAM, J. What is the effect of it, then?

Mr. GREGG. I am merely attempting to show that an effort was made to purchase the business.

PUTNAM, J. What of that?

Mr. GREGG. By the United Shoe Machinery Company.

PUTNAM, J. What of that?

Mr. GREGG. I think it is evidence tending to show an attempt to monopolize in acquiring a competitor.

PUTNAM, J. Well, we will take it. In the first place, you have got to prove that Mr. Bresnahan was authorized to represent the defendant corporation.

Mr. GREGG. As far as I can go with this witness, of course, I can only show whether or not Mr. Bresnahan represented to the witness that he was representing the corporation.

PUTNAM, J. That is all. Begin now and suppose it were a case that you would take to a jury. Are you proposing to prove
287 that Mr. Bresnahan had any authority from the corporation to call upon this man?

Mr. GREGG. Any authority? I don't know; I have got to work back; I have got to lay the foundation for it.

PUTNAM, J. You are beginning at the wrong end.

Mr. GREGG. I am merely attempting to show that he was a representative of the United Shoe Machinery Company. Whether he had gone to the president of the United Shoe Machinery Company and the president had told him to go out to see Mr. Long, or not, I don't know.

PUTNAM, J. How are you going to prove that he was a representative of the United Shoe Machinery Company?

Mr. GREGG. There are contracts in evidence here showing that Mr. Bresnahan's business was purchased by the United Shoe Machinery Company, that Mr. Bresnahan entered——

PUTNAM, J. That doesn't make him a representative. How are you going to show that he is a representative of the United Shoe Machinery Company?

Mr. GREGG. Well, I suppose the only way we could show that would be to call some of the officials of the United Shoe Machinery Company.

PUTNAM, J. Haven't you got to begin there?

Mr. GREGG. To show whether or not he was in their employ?

PUTNAM, J. Haven't you got to begin there first?

Mr. GREGG. Well, that would necessitate recalling the witness for the purpose of showing this particular transaction.

PUTNAM, J. You have a right to do it after you have shown Mr. Bresnahan had some authority.

Mr. GREGG. Well, I can't show that at this time.

PUTNAM, J. I am prepared to concede, as far as I am concerned, that upon the theory of the United States, and perhaps under the law, you are justified in showing that the United Shoe Machinery Company was trying to buy up this property

the same as you show that they were trying to buy up this property out here as to which the treasurer testified. But you have got to show that whoever did it was authorized to do it.

Mr. GREGG. Authorized by whom, if your Honor please?

PUTNAM, J. In the ordinary way in which such things are proved. There is nothing new in this case as far as that is concerned.

Q. Was this Maurice Bresnahan that approached you?

A. Yes, sir.

Mr. GREGG. I will withdraw the question for the time being. You may cross-examine.

Mr. CHOATE. You are going to recall him, I understand.

Mr. GREGG. Yes; I am going to recall him.

Mr. CHOATE. I would rather wait till he comes back and finishes his testimony, both because he is to be recalled and because he has opened up some other matters, in regard to which I am not yet prepared to cross-examine.

PUTNAM, J. Call the next witness, Mr. Gregg.

Mr. GREGG. I had expected, if your Honors please, that the time this afternoon would be taken up with the examination of this witness.

BROWN, J. Does the defendant dispute the authority of Mr. Bresnahan as agent of the company?

Mr. CHOATE. Of Mr. Bresnahan? Absolutely.

288 Mr. GREGG. Was he employed by the company at that time?

Mr. CHOATE. He was employed by the company at some time, but that doesn't authorize a man to go out and buy a lot of property. He never was employed as an executive officer. He had something to do with some tool department.

Mr. GREGG. If the court please, with respect to the matter that I intended to recall Mr. Long about, I will waive that matter and ask that he be cross-examined now.

Mr. CHOATE. Well, I ask that——

PUTNAM, J. Mr. Gregg, do you mean this witness here?

Mr. GREGG. This witness; yes.

Mr. CHOATE. I ask that I be given time to prepare for cross-examining the witness on the ground that he has testified very largely to matters that we should have been advised of by a bill of particulars. Take, for instance, if your honors please, this matter of refusing to supply him with parts for the Eppler machines.

BROWN, J. Will you state that you are unprepared to go on with that matter?

Mr. CHOATE. I am unprepared on that, because I want to have looked up his orders for parts. We have got to go to Beverly to look that up. I don't want your honors to feel that I am not prepared in any respect, but in a great many respects I am not prepared.

PUTNAM, J. That is all right.

Mr. GREGG. Well, if he is not to be cross-examined, then I reserve my right to ask him additional questions when he comes in.

PUTNAM, J. Anything further this afternoon, Mr. Gregg?

Mr. GREGG. I will try to get another witness.

BROWN, J. I understand that you reserve your right to go into both matters, the matter of comparative costs and this later matter.

Mr. GREGG. The matter of costs.

BROWN, J. Yes. You reserve your rights on that?

Mr. GREGG. Yes; I reserve my rights on that.

BROWN, J. As well as on the Bresnahan transaction?

Mr. GREGG. Yes, sir.

JUNE 10, 1913.

RICHARD H. LONG, witness for the United States (resumed)

Q. Have you at any time applied for a line of credit with the Chapin National Bank at Springfield, Massachusetts?

A. Yes, sir.

Q. When?

A. I believe it was in 1908.

Q. With what result?

A. The credit man of the Chapin National Bank——

PUTNAM, J. Merely the result; that is all.

The WITNESS. It was denied.

Q. Do you know why it was denied?

289 Mr. CHOATE. I suppose all he can state is what they told him, and that, I submit, is not competent.

PUTNAM, J. You have got to fill in the gap.

Q. Was the credit at first denied when you applied for it?

A. No, sir. I was given to understand that I could have it.

Q. Now, state what took place subsequently.

Mr. CHOATE. Whom is he talking with, Mr. Gregg?

Q. With whom did you confer at the Chapin National Bank?

A. I conferred with Mr. Miller, the credit man of the Chapin National Bank.

Q. What did Mr. Miller say to you?

Mr. CHOATE. I would like to interpose an objection to his conversation with Mr. Miller until it is shown that the United Company was in some way connected with it or knew about it.

PUTNAM, J. It goes in de bene; that is all.
BROWN, J. It must be connected.
Mr. GREGG. Go ahead, Mr. Long.
Mr. CHOATE. Might I inquire whether the United States proposes to connect it or knows anything about it?
Mr. GREGG. We expect to connect it back as far as we can, Mr. Choate.
Mr. CHOATE. Do you state to the court that you propose to show that the United Company had anything to do with Mr. Miller, of the Chapin National Bank?
Mr. GREGG. If the court please, as I understand the situation, it is this: The credit man of the Chapin National Bank solicited Mr. Long's business——
PUTNAM, J. Answer Mr. Choate's question first, Mr. Gregg.
Mr. GREGG. That is what I am coming to.
PUTNAM, J. You can answer it by yes or no. Do you propose to show?
Mr. GREGG. I said yes; that we proposed to show as far as we could what the United Shoe Machinery Company had to do with the refusal of this line of credit. Mr. Long was assured by the Chapin National Bank that a certain line of credit would be extended to him.
PUTNAM, J. How are you going to show that the Shoe Machinery Company had anything to do with it?
Mr. GREGG. Then Mr. Miller, I believe it was—is that correct, Mr. Long?
The WITNESS. Yes.
Mr. GREGG. Mr. Miller, of the Chapin National Bank——
PUTNAM, J. How are you going to connect it with the Shoe Machinery Company?
290 Mr. GREGG. I am coming to that now, if the court please.
Mr. Miller, of the Chapin National Bank, came to Boston with Mr. Long and introduced him to Mr. Dwinnell, the vice president of the First National Bank; that Mr. Long submitted to Mr. Dwinnell a statement of his financial condition, and that after considering the matter for a few moments—Mr. Long had applied to the First National Bank, and said he would like to have a line of credit with them, it appearing that the Chapin National Bank was the correspondent for the First National of Boston; that Mr. Dwinnell before Mr. Long left said: "Well, I can submit this matter, I suppose, to the board of directors, but it would be useless, for the reason that Mr. Winslow and two or three other officials of the United Shoe Machinery Company are heavily interested in this bank, and are on the board of directors, and it would be useless." Mr. Long them remarked: "Well,

I should like to have a line of credit." He left there and, as I understand it, that was all he heard from Dwinnell after that. That is the situation.

Mr. CHOATE. It seems to me that rests entirely with Dwinnell.

PUTNAM, J. That is all you know about it?

Mr. GREGG. Yes; that is the situation, so far as I understand it.

PUTNAM, J. We all agree it is not admissible, unless you can bring it home.

Mr. GREGG. May we be allowed an exception on that?

PUTNAM, J. You can put that in the record. You are entitled to have all that statement in the record, under the rule, and your exception can be noted.

BROWN, J. We understand that is the whole extent of the proof you propose to offer on that point?

Mr. GREGG. From Mr. Long; yes, sir.

BROWN, J. So far as your entire proposed proof is concerned?

Mr. GREGG. So far as this witness can testify. Then I have another witness following who will testify that he was informed by a representative of the United Shoe Machinery Company that Mr. Long could not continue to do business, do any great amount of business in shoe machinery, for the reason that the United Shoe Machinery Company and its representatives controlled the banking interests both of Boston and of New York City. When that representative of the United said, "We control the banking interests here," the man to whom he was talking said, "I suppose he can go to New York?" "Well," he said, "we control it there just the same as we do here."

PUTNAM, J. When you offer that testimony we will see whether that is admissible or not.

Mr. GREGG. You may cross-examine, Mr. Choate.

PUTNAM, J. If you claim that this Shoe Machinery Company controls the City National Bank of New York, it would be like the tail wagging the dog, wouldn't it? When you offer that perhaps you can come back to this, Mr. Gregg.

291 Cross-examination:

Q. (by Mr. CHOATE). Mr. Long, how long have you been in the shoe manufacturing business?

A. Since 1886 as an employer.

Q. Where did you have your factory at first?

A. South Weymouth, Massachusetts.

Q. When did you move from South Weymouth?

A. I think it was in 1887.

Q. Where did you move to?

A. Braintree.

Q. How long did you stay in Braintree?
A. Until 1896.
Q. Where did you move from Braintree?
A. Belchertown, Massachusetts.
Q. How long did you stay in Belchertown?
A. Until 1898.
Q. Then moved where?
A. To Springfield.
Q. How long were you there?
A. Till 1901.
Q. Then you went to Framingham, or to South Framingham?
A. South Framingham.
Q. Did you manufacture shoes in each of those places?
A. Yes, sir.
Q. Did you in Belchertown?
A. Yes, sir.
Q. You ran a factory there?
A. Yes, sir.
Q. How much of the two years you were there did you operate?
A. All the time.
Q. When you were at South Weymouth the name of the concern was John Long & Company, wasn't it?
A. John Long & Son.
Q. What did you call the concern when you moved to South Weymouth?
A. That is where we started.
Q. When you moved to Braintree, I mean.
A. The same.
Q. What did you call it when you moved to Belchertown?
A. The concern then was the R. H. Long Shoe Manufacturing Company.
Q. And the same name at Springfield?
A. Yes, sir.
Q. And the same name when you first went to Framingham?
A. Yes, sir.
Q. Then, about 1906, you changed the name or transferred the business to some other concern?
292 A. No, sir.
Q. Are you doing business now in the name of the Framingham Shoe Company?
Yes, sir.
Q. When did you organize the Framingham Shoe Company?
A. I didn't organize the Framingham Shoe Company.

Q. When was it organized?
A. In 1906.
Q. Was the business of the R. H. Long Company transferred to the Framingham Shoe Company?
A. No, sir.
Q. Well, just describe what has taken place with reference to your business and the Framingham Shoe Company.
A. The R. H. Long Shoe Manufacturing Company discontinued business in February, 1907, and the Framingham Shoe Company at that time began manufacturing shoes.
Q. You were the principal stockholder in each?
A. Yes, sir; at that time.
Q. That is, you or your wife was?
A. Yes, sir.
Q. It was really doing the same business under another name?
A. No, sir.
Q. Didn't you operate in the same factory?
A. Partly.
Q. And with the same employees?
A. Partly.
Q. The same management?
A. Partly.
Q. And the same capital?
A. No, sir.
Q. The same president?
A. No, sir.
Q. You were still the active man in each?
A. I was the active man to a certain extent.
Q. Did you organize another corporation in Framingham?
A. Yes, sir.
Q. What was that called?
A. The Middlesex Building Company.
Q. Did you organize another one with reference to the shoe business or shoe machinery business?
A. Yes, sir.
Q. What is the name of that?
A. R. H. Long Machinery Company.
Q. That is in Framingham?
A. Yes, sir.
Q. And in that you are the active man?
A. One of the active men.
Q. It is your capital principally?
A. Principally; yes, sir.

Q. And your interests?

A. Principally.

293 Q. Now, in South Weymouth and in Braintree you were manufacturing your welt shoes by means of the Goodyear machines, weren't you?

A. To some extent.

Q. Well, you hadn't any other machinery for making Goodyear shoes—Goodyear welt shoes—other than that you got from the Goodyear Company, had you?

A. Not Goodyear welt. We made some welt shoes.

Q. With what kind of welt machines?

A. We sewed the welts with McKay machines and stitched the soles with a Campbell machine.

Q. At what period was that?

A. That was along about 1890–1891.

Q. After 1891 did you use it?

A. Yes, sir.

Q. Were you doing your welt work principally between 1891 and 1896 with the Goodyear machines?

A. Yes, sir.

Q. Do you know how many you had or what output you were putting out with them?

A. I think we had two welters and two or three stitchers.

Q. You first began to do something or experiment with the Eppler machines in about what year?

A. Began manufacturing shoes with the Eppler machines in 1898.

Q. Up to that time, from 1891, you had been using the Goodyear equipment?

A. Yes, sir.

Q. Did you get some special inducement from the Eppler Company to try the Eppler machines?

A. Well, got a lower price than the Goodyear charged.

Q. Just answer my question, please. Did you get some special inducement from them?

A. I don't know what you mean by "special inducement."

Q. You know, don't you, that the regular rate of royalty for the Eppler machines was four cents a pair if paid by the 15th of the following month?

A. I don't know that anybody ever paid four cents a pair.

Q. I am not asking you that. I am asking you if you do not know that that was the regular rate?

A. The regular rate, as far as I know, was three cents a pair for men's shoes.

Q. Is that your signature [showing a document to witness]?
A. Yes, sir.
Q. "R. H. Long Shoe Manufacturing Company, R. H. Long, president"?
A. Yes, sir.
Q. That is the lease of your Eppler machines, isn't it?
A. Yes, sir.
Q. It covers all the Eppler machines that you had, doesn't it?
A. I couldn't say about that. I presume it does.
294 Q. Now, I call your attention to the second page of that lease, to the schedule of rents and royalties.
A. Yes, sir.
Q. Aren't those exactly the same as the Goodyear as shown by the schedule?
A. But they are qualified——
Q. Pardon me. Answer my question—as shown by the schedule?
A. That is the gross price, but not the net price.
Q. Wait a moment. As shown by the schedule the rents and royalties are the same as the Goodyear?
A. The gross rents and royalties.
Q. And there was the same discount of fifty per cent provided by the lease as was provided by the Goodyear?
A. With an addition of twenty-five.
Q. Just answer my question, please. The same rate of discount provided by the lease as was provided with the Goodyear machines?
A. No, sir. The Goodyear provides fifty per cent, and the Eppler provides fifty and twenty-five.
Q. Let me ask your attention to the print of the leases:
"If the rents and royalties due on the first day of any month shall be paid on or before the 15th day of that month it will in consideration thereof grant a discount of 50 per cent."
That is right as the print reads, isn't it?
A. Yes.
Q. In your lease is written in in red ink the words "and twenty-five"?
A. Yes, sir.
Mr. CHOATE. I will ask your Honor's attention to that. This is his lease of his Eppler machines [showing the lease to the court.]
Q. Now, you notice that that lease provides for a discount of fifty and twenty-five?
A. Yes, sir.

Q. Provided you pay on or before the fifteenth day of the following month?
A. Yes, sir.
Q. Were you in the habit of paying your royalties so they were paid on or before the 15th of the following month?
[Lease No. 227, dated September 30, 1898, between Eppler Welt Machine Company and R. H. Long Shoe Manufacturing Company is marked "Defendants' Exhibit 44."]
Q. What do you say, Mr. Long?
A. I paid the royalties in time to get the discount of fifty and twenty-five per cent.
Q. That is what I asked you—if you were in the habit of paying your royalties in time to get the discount?
A. Yes, sir.
Q. Is that your handwriting [showing a letter to witness]?
A. Yes, sir.
Q. That is a letter of January 31, 1899?
295 A. Yes, sir.
Q. Addressed to the Eppler Machine Company:
"Gentlemen: Enclosed check royalty December $194.76."
That was not on time, was it?
A. It was time enough to get the discount.
Q. Wait a minute. You heard my question?
A. Yes, sir.
Q. I say it was not within the time named in the lease, was it?
A. No, sir.
Mr. CHOATE. I offer that letter.
[Letter dated January 31, 1899, from R. H. Long to Eppler Welt Machine Company is marked "Defendants' Exhibit 45."]
Q. Is that your signature [showing a letter to witness]?
A. Yes, sir.
Mr. CHOATE. [Reading.]

"MAY 17th, 1899.

"EPPLER WELT MACHINE COMPANY, Boston.
"GENTLEMEN: Enclosed find check, royalty to May 1st less fifty per cent, $305.66."
Q. That was late, wasn't it?
A. I don't know whether it was late or not. I don't think it was.
Q. Well, it was after the 15th of the following month?
A. The Eppler Company didn't——
Q. Just a minute. It was after the 15th of the following month, wasn't it?
A. Yes, sir.
Q. You say at the bottom:

"We pay this royalty without deducting the 25 per cent, although we took the machine with royalty at 3 cents net. If other lessees only pay 3 cents we shall expect refund of the extra one cent."

What knowledge had you as to what other lessees paid when you wrote that letter?

A. I don't know.

[Letter dated May 17, 1899, from R. H. Long to Eppler Welt Machine Company is marked "Defendants' Exhibit 46."]

Q. Is that your signature [showing letter to witness]?

A. Yes, sir.

Mr. CHOATE. This is dated December 19, 1899:

"EPPLER WELT MACHINE COMPANY.

"GENTLEMEN: Your letter at hand. We will pay you October royalty this week and November royalty next week. Hoping this will be satisfactory, I am,

"Yours, truly,

"R. H. LONG."

Q. You were behind on your royalty then, weren't you?

A. It would seem so.

[Letter dated December 19, 1899, from R. H. Long to Eppler Welt Machine Company is marked "Defendants' Exhibit 47."]

296 Q. Now, after the 1st of March, 1899, did you claim that you were entitled to the additional twenty-five per cent?

A. I presume I did.

Q. What do you say as a fact? I want to know what you claim.

A. That being after the——

Q. Just answer me yes or no, sir. Did you claim that you were entitled to it?

A. I should say I did.

Q. Did you get it?

A. I don't know whether I got it or not.

Q. You said in your examination on Friday that you gave up the Eppler welt machines because you couldn't get the parts.

A. Yes, sir.

Q. You were in the habit of sending in orders for parts, weren't you?

A. Yes, sir.

Q. Now, have you any specific instance that you remember, or any record of any instance that you remember, when you did not get parts with reasonable promptness?

A. I don't remember any.

Q. Was it a matter that you attended to yourself?
A. Sometimes.
Q. So that the orders would probably be in your handwriting?
A. The orders would probably be by telephone.
Q. Did you order by writing?
A. Sometimes.
Q. I call your attention to a letter on the letter paper of the R. H. Long Shoe Manufacturing Company, dated February 13th, 1899, addressed to the Eppler Welt Machine Company. Does that come from your office [showing letter to witness]?
A. Yes, sir.
Q. Whose writing is that?
A. It is not mine.
Q. Well, it is that of somebody who was authorized to make the request?
A. I presume it was.
Q. Who is "T"—R. H. Long Shoe Manufacturing Company, "T"?
A. I don't know.
Q. Who was "T" in your employ at that time?
A. I don't recall anyone by that name.
Mr. CHOATE. "Please send us six awls for Eppler welter for use with No. 41 needle; also four needle guards for No. 41 needles."
Q. Is that a request for parts such as you had in mind?
A. It is.
Q. Of course you haven't any recollection as to when that was filed?
A. No, sir.
[Letter dated February 13, 1899, from R. H. Long Shoe Manufacturing Company, "T," to Eppler Welt Machine Company is marked "Defendants' Exhibit 48."]
297 Q. I would just like you to identify some of these letters. I show you a letter of February 17th, 1899, signed "R. H. Long & Company."
A. Yes, sir.
Q. Is that from your office?
A. Yes, sir.
Q. With a request for parts?
A. Yes, sir.
[Letter dated February 17, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 49."]
Q. February 21st. Is that a later one [showing a letter to witness]?

A. Yes, sir.

[Letter dated February 21, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 50."]

Q. February 22d, the same [showing letter to witness]?

A. Yes.

[Letter dated February 22, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 51."]

Q. February 28th, the same?

A. Yes.

[Letter dated February 26, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 52."]

Q. March 1st, the same?

A. Yes, sir.

[Letter dated March 1, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 53."

Q. March 13th, March 18th, the same?

A. Yes.

[Letter dated March 13, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 54."

Letter dated March 18, 1899, from R. H. Long Shoe Manufacturing Company to Goodyear Shoe Machinery Company is marked "Defendants' Exhibit 55."]

Q. A letter not dated, but probably April 7th, 1899. [Handing the witness a letter.] Is that another one?

A. Yes, sir.

[An undated letter bearing at the bottom the words "Telephoned factory April 7th, 1899," from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 56."]

Q. How much of a period would you say we ought to cover to get a fair sample of the service or lack of service which you were getting or not getting in parts?

A. Why, I should think parts ought to be sent the same day they were received.

298 Q. That is not what I am asking you at all. I say how much of a period do you think it would be fair for us to go into these details to see whether you got service or not? Pick your own time.

A. I wouldn't be able to pick a time.

Q. I have taken the month of March, 1899. Now, is there any reason why that seems to you an unfair time to take to find out whether your statement is correct or not?

A. Yes. Not on the time.

Q. That is a fair time to take, is it?

A. I should say yes.

Q. Is it long enough?

A. As far as those parts are concerned, it is long enough.

Q. Is there any other period you would prefer to take, or any longer period you think we should take? Fix your own time.

A. I wouldn't be able to fix a time.

Q. I want to see if your complaint that you didn't get service is credible. Now, I ask you to select any time you like and any period you like and we will produce your orders and see if they were filled.

A. It isn't only the orders.

Q. I am confining you to the orders and asking you to fix a time.

A. I wouldn't be able to fix a time on what happened so long ago.

Q. Is there any other time that you would like to take?

A. I haven't any records showing the time.

Q. Well, have you any preference about the time for which we should look?

A. No.

Q. Is that as satisfactory to you as any time?

A. As far as the time is concerned.

Q. You will not stand or fall by the month of March?

A. I won't stand or fall by that method of showing whether the parts were supplied or not.

Q. You will stand or fall by that?

A. No; I will not stand or fall by that method. There is something more than sending the parts.

Q. We will come to that by and by. I am dealing with parts now, which is your complaint.

A. That refers to needles and awls. There is no question about needles and awls.

Q. Didn't I ask you if those were orders for parts, and didn't you say so?

A. Yes.

Q. Let us see if you ordered anything else than needles and awls. Take April 2d. Is that an order? There you ordered two gib rings for Eppler stitching machine at once. Is that an order?

A. That is an order.

Q. For parts?
A. Yes, sir.
[Letter dated April 2, 1899, from R. H. Long to Goodyear Shoe Machinery Company is marked "Defendants' Exhibit 57."]
299 Q. Take April 14th. There you ordered a belt for rough rounder and six knives for rough rounder. Is that satisfactory to you? Is that an order?
A. That is an order.
Q. Is that a fair sample?
A. That is nothing but what we could get anywhere.
Q. But you ordered that of the Goodyear Machinery Company?
A. Yes, sir.
[Letter dated April 14, 1899, from R. H. Long, president, to Goodyear Shoe Machinery Company is marked "Defendants' Exhibit 58."]
Q. You were complaining about the orders being for needles and awls. I will show you something else. Here is one of April 15th:
"Enclosed find channel knives. The knives wanted are for rough rounder."
The knives related to the last order. I will put that in.
"APRIL 22ND.
Please send us by return mail twelve Gem channel knives."
Those are the parts, are they?
A. Yes; they are parts.
[Letter dated April 15, 1899, from R. H. Long Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 59."
Letter dated April 22, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 60."]
Q. Now, have we got a fair sample?
A. No, sir.
Q. Then I will take some more. April 26th, 1899, you ordered 100 No. 47 stitching needles; May 2d, 1899, you ordered 200 No. 41 welt needles and part No. 466 for stitcher. Is that a fair sample order?
A. I can explain if you will——
Q. I am just asking you this question. I want to see if I get a fair sample lot of orders.
A. That is not a fair sample of what we complained of.
[Letter undated but stamped "Eppler Welt Machine Company, April 26, 1899," from R. H. Long Shoe Manufacturing Company

to Eppler Welt Machine Company is marked "Defendants' Exhibit 61."

Letter dated May 2, 1895, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 62."]

Mr. CHOATE. Then I will go on with some more.

Q. I will begin with another period—October 28th:

"Please send three screws—don't know the number—the screw that holds shield and welt spring to welt guide."

Is that an order?

300 A. Yes, sir.

Q. For parts?

A. That is an order for parts.

[Letter dated October 28, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 63."]

Q. November 3, 1899:

"Kindly send us six each No. 0 and No. 7 channel knives for inner sole machines."

November 22d, 1899:

"Kindly send us six awls for Eppler welt to run with No. 41 needles."

November 23, 1899:

"Kindly send us six K channeling knives like sample enclosed."

Now, is that a fair sample lot of the orders for parts?

A. Not what we complained of; those are needles.

[Letter dated November 3, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 64."

Letter dated November 22, 1899, from R. H. Long Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 65."

Letter dated November 23, 1899, from R. H. Long Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 66."]

Q. I ask you if that is a fair sample lot?

A. It is a fair sample of needles and knives; it is not a fair sample of what we complained of.

Q. What is it you complained of?

A. That when we wanted some special part to keep the machine going that part was delayed, so that we didn't get it.

Q. Can you name a single instance, so that we can find it?

A. I couldn't name it at this time.

Q. Among those orders there are orders for special parts?

A. Yes, sir.

Q. But apparently you didn't order special parts very often.
A. I presume the orders were usually by telephone.
Mr. CHOATE. I would like to have that answer stricken out as not responsive to the question.
PUTNAM, J. It may be stricken out.
Q. Just notice my question. I say the orders for special parts are not very frequent among those orders?
A. They are not.
PUTNAM, J. Make it a little more clear. You mean among these written orders?
Mr. CHOATE. Among these written orders; yes, sir.
Q. Now, if I am doing you any injustice, Mr. Long, we will take all the written orders we have for this period—if you don't think that is a fair sample lot.
A. I don't think the written orders will show.
Q. Why not?
A. Well, if you wish me to explain I will.
301 Q. Well, I have asked you, why not?
A. An order might be given for a part in a machine—something that required the agent to come to the factory and put it in the machine—while orders for trifling parts which were not specially material might have been filled promptly, the parts that were really necessary to keep the machines running were not filled and were not taken care of promptly.
Q. Do you think that you could produce the record of a single instance that would support your statement?
A. I can produce people that worked in the factory that would support it.
Q. I am not asking you that. Can you produce a single record of a single instance that would support your statement?
A. I haven't any record.
Q. Now, it would be extraordinary, wouldn't it, if in these orders we could not find some orders for such parts as we are speaking of?
A. Even if you admit the orders——
Q. No. I say it would be extraordinary if we didn't find some instances of that kind?
A. No; I don't think it would.
Q. It would be extraordinary if you didn't make your orders for parts by letter when you were constantly writing almost every day?
A. We wouldn't write from Springfield if we were in a hurry.
Q. But you were writing almost daily from Springfield?
A. Ordering parts we didn't need immediately.

Q. Ordering parts you didn't need immediately?
A. Yes. Anything we were in a hurry for we would telephone.
Q. Take your letter of November 22d, where you ordered six awls for Eppler welts, you said: "Your promptness will greatly oblige." Was that something you didn't need?
A. In a day or two we needed them. If we had needed them quick we would have telephoned.
Q. You think probably we can't find in all these written orders a trace anywhere of the things you wanted quick?
A. I should say anything we wanted quick we would telephone.
Q. So we can't find any record of it?
A. It would be doubtful if you could find any.
Q. Well, this is called to my attention as an illustration of the thing you have just spoken of. I call your attention to a letter of June 4th, 1900:
"EPPLER WELT MACHINE CO., *Lincoln St., Boston.*
"Please send agent to fix stitcher. This is machine we have had so much trouble with. It has broken four gears, No. 418, in a week. If you send agent from Brockton would prefer Mr. Torrey unless you think somebody else is better. Send two gears No. 418 by return mail. Would like this machine fixed as soon as possible as we are very busy."
302 Is that an instance of a case where you wanted something quickly?
A. I should say that was.
[Letter dated June 4, 1900, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 67."]
Q. Now, you have on a number of occasions spoken of this grievance that you had about the Eppler welt machines, haven't you?
A. Yes.
Q. Once or twice here before the Massachusetts Legislature and once or more at Washington?
A. Yes, sir.
Q. But you have never, before this occasion, have you, ever testified to your talk with Mr. Wilson about the Chase lasting machines?
A. I don't recall that I have.
Q. Although you had the freest opportunity to tell all that you wanted to tell before the Massachusetts Legislature, you never told about your talk with Wilson on the Chase lasting machines, and although you had the fullest opportunity to talk at Washington you never told it there, did you?

A. I don't remember.
Q. Now, you testified on Friday that in 1899 or 1900 Mr. Wilson told you that you couldn't have any more Chase machines—that you had got to use the Consolidated if you wanted to get a machine?
A. Yes, sir.
Q. That is right, is it? Do you know how many Chase machines you had at that time?
A. I think we had four or five.
Q. Were they then at Framingham or at Springfield?
A. Springfield.
Q. When did you move from Springfield down to Framingham?
A. It was the latter part of 1901 or the early part of 1902.
Q. Did you transfer those Chase machines from Springfield to Framingham?
A. I think so.
Q. And you say you had about four?
A. I couldn't say just how many. We had a number.
Q. Well, you said four, didn't you?
A. Four or five; might have been six.
Q. Did you give me the date when you transferred from Springfield to Framingham?
A. The latter part of 1901 or the early part of 1902.
Q. At any rate, up to that time you had not returned those four Chase machines?
A. I don't think they were returned.
Q. Well, have you ever returned them?
A. I don't think so.
Q. You don't think so?
A. Tried to.
Q. Have you ever returned them?
A. I don't think any of the Chase machines were ever returned.
303 Q. How many Chase machines have you got now of the United Company which you have not returned?
A. Oh, I think there were a dozen or more in storage out in Framingham.
Q. Then after you moved from Springfield to Framingham you received at least seven more Chase machines?
A. No; that wouldn't follow.
Q. What?
A. That wouldn't follow.
Q. Well, you had four when you moved from Springfield to Framingham?

A. No; I didn't say that. I said I had four in Springfield.
Q. Well, how many did you have at the time of this talk with Wilson?
A. Four or five; six.
Q. You have got twelve now, at least?
A. Yes.
Q. When did you get the additional six, seven, or eight?
A. After I told him that I would go lasting by hand if they didn't give me some more Chase machines.
Q. And when was that?
A. That was after trying the Consolidated about two years.
Q. That is something you haven't told us about heretofore?
A. Yes, sir.
Q. Did you forget it?
A. No, sir.
Q. Just omitted it?
A. Well, I don't think I was asked.
Q. You didn't tell it because you weren't asked? I understood you were asked to tell all your conversations with Wilson.
A. Oh, no.
Q. Now, you say that in 1902 you had some talk with him and you got more Chase machines?
A. Well, I didn't talk with Wilson at that time. I talked with Mr. Hutchinson.
Q. I understood you to say that that was a talk with Wilson?
A. No, sir.
Q. It wasn't?
A. No, sir.
Q. Who did you say it was with?
A. Mr. Hutchinson.
Q. What is his first name?
A. I don't know.
Q. Do you know whether he is with the United now?
A. I have been informed that he has been retired.
Q. He is dead; you knew that, I suppose?
A. No, sir.
Q. You knew Wilson was dead?
A. Yes, sir.

304 Q. And while he was alive you never told this story of your talk with him, did you?
A. I think I did.
Q. I have understood you to say you never testified to it before?
A. I don't recall whether I ever testified to it or not.
Q. You knew that he died about two years ago?

A. I knew that he died somewhere recently; yes, sir.
Q. Now, I understand you to say this talk with Mr. Hutchinson was in 1902?
A. I couldn't say. It was some time about 1901 or 1902.
Q. Is that your signature [showing witness lease]?
A. Yes, sir.
Q. That is a lease you signed, isn't it?
A. Yes, sir.
Q. How many Chase lasting machines did you get under that lease?
A. Five.
Q. One, two, three, four, five, six, didn't you?
A. Six; yes.
Mr. CHOATE. I offer this paper, if your honor please; it is dated the sixteenth day of January, 1904, by which the witness received six Chase lasting machines from the United Company.
[Lease between the United Shoe Machinery Company and the R. H. Long Shoe Manufacturing Company dated the sixteenth day of January, 1904, is marked "Defendants' Exhibit 68."]
Q. Now, were you intending to be perfectly frank with the court on Friday when you told them that Mr. Wilson wouldn't let you have any more Chase lasting machines back in 1899 or 1900?
A. Yes, sir; that was a fact.
Q. And that you were obliged to use Consolidated lasting machines because you couldn't get Chase lasters?
A. Yes, sir.
Q. Is that your letter [showing witness letter]?
A. Yes. That was in 1903, but conditions were different in 1903 than they were in 1899.
Mr. CHOATE. I offer this letter, if your honor please. It is dated August 7th, 1903.
[Letter from R. H. Long to the United Shoe Machinery Company dated August 7, 1903, is marked "Defendants' Exhibit 69" and is read by Mr. Choate as follows:]
"SOUTH FRAMINGHAM, MASS., *August 7, 1903.*
"UNITED SHOE MACHINERY CO., *Boston, Mass.*
"GENTLEMEN: Your favors of 1st and 6th at hand. Mr. John E. Long has charge of all the work in the factory, and he has no desire to use the Chase machines on work that can be done well on the Consolidated. The price for lasting is less on the Consolidated than on the Chase, and Mr. John E. Long and the writer are trying at all times to keep down the cost of labor and will use the Consolidated machines so far as possible."

305 Q. By the way, you were the writer, weren't you?
A. Yes, sir.
[The remainder of the letter is read by Mr. Choate as follows:]
"I believe we have six machines (Consolidated) four of them set up and have been running until yesterday. One operator left and we have a man to take his place to-morrow or Monday. I think the operators are satisfied and have been earning good pay. I think we will be able to run all the Consolidated machines we have to their full capacity as well as some of our Chase machines, and reports that have come to you saying we did not wish to use the Consolidated machines are not true. We are now advertising for cutters and stitchers, and when we get underway on the fall trade we expect to start the other two machines which would have been running now if we had enough help in cutting and stitching room.
"Yours, truly,
"R. H. LONG."
Q. Now, you say the conditions weren't the same in 1903 that they were when you had this talk in 1899 or 1900?
A. Yes, sir.
Q. Do you mean by that to say that while you could get the Chase machines in 1903, you couldn't get them in 1899 or 1900?
A. That is one of the things I meant to infer.
Q. All right. Let us see whether any statement of that kind you make is correct. Is that your signature [showing witness paper]?
A. Yes, sir.
Q. Is that your signature [showing witness another paper]?
A. Yes, sir.
Q. You have identified two leases, haven't you, one dated January 12th, 1900, for one Chase lasting machine No. 1140?
A. Yes, sir.
Q. And you have identified another lease dated July 23d, 1900, for four Chase lasting machines numbered 158, 323, 437, and 774, haven't you?
A. Yes, sir.
Q. So that about the time or immediately after you had this talk with Wilson you got five more Chase machines than you had before?
A. No, sir.
Q. Didn't you take those five?
A. I don't know whether those five were old leases changed over.
Q. Pardon me. Didn't you take those five machines?

A. I took those five machines. The lease is signed for those five machines at that time. I don't know when we got them.

Q. How are you going to explain that? You say you don't know whether those were overs or not?

A. I can explain it, if you wish me to.

Q. Well, is it that those were machines that you had before and were put on a new lease?

A. That may be.

Q. Well, is it the fact?

A. I don't know.

Q. We can tell by the numbers, can't we?

A. I think we can.

Q. Have you any other explanation to make except the one you have just offered?

306 A. Yes, sir.

Q. Well, let us have that.

A. When we went to Springfield from Belchertown, we were using Chase lasting machines, and after the United Company sent their agents around to request that we sign their new leases they also asked us if we wouldn't use the Consolidated machine instead of the Chase. They intended——

Q. Now, Mr. Long, what I gave you an opportunity to explain was why these were not additional machines, and I think you should confine yourself to that explanation. That is what you asked an opportunity to explain.

A. I don't know anything about whether those were additional machines or not.

Q. Let us see about that. You said you couldn't get any Chase machines; you said so Friday, after you had this talk with Wilson. I have now shown you a lease for five additional machines in the year 1900.

A. That might have been after——

Q. And you said that possibly those were machines transferred from some other place. Now, I ask you if you have any other explanation of the discrepancy between your statement Friday and your admission about these leases?

A. I don't find any discrepancy in my statement.

Q. Well, perhaps others do; but I say, have you any other explanation to make of that?

A. Yes.

Q. All right; what is it?

A. That those lasting machines, if they were furnished at that time, may have been furnished after we had used the Consolidated machines and become so disgusted with the work that they did that we told the United Company we would go back to hand lasting unless they would give us Chase machines.

Q. Now, have you any other explanation to make? I want to get all of them now, if you have got any others to make.

A. I don't think of any just now.

Q. And if none of those explanations are found to fit your statement of last Friday about not being able to get Chase machines, it is not true, is it?

A. No, I wouldn't say that. I haven't all the facts in regard to dates of these machines in mind.

Q. You said that we could easily trace these machines by the numbers, didn't you, to see whether they were transferred machines or new machines?

A. I presume you could.

Q. I show you a sheet which purports to give a list of the Chase lasting machines leased to the R. H. Long Manufacturing Company, beginning with the year 1893.

A. Yes, sir.

[List of Chase machines leased to R. H. Long Shoe Manufacturing Company is marked "Defendants' Exhibit 70."

Lease between the Consolidated & McKay Lasting Machine Company and R. H. Long Shoe Manufacturing Company dated January 12, 1900, is marked "Defendants' Exhibit 70 A."]

Q. I call your attention to the numbers of the machines in the two leases which you last identified, namely, 1140, 158, 323, 437, and 774. Will you examine the list of machines leased you that I show you, and tell me whether you find that you had those numbers, lasting machines of those numbers, prior to December 29th, 1899?

307 A. What is this supposed to be?

Q. A list of the numbers of Chase machines which you had.

A. I don't see how I can tell whether I got them before.

Q. Well, I ask you to look at the numbers.

A. I don't see any dates.

Q. I ask you to look at the numbers.

A. I see the number 1140 is there.

Q. And against that appears the date December 29th, 1899, doesn't it?

A. Yes, sir.

Q. And all the other numbers of machines in the two leases I show you are later than that date, 158, 323, 437, and 774?

A. Yes, sir.

Q. So that shows they were machines which you had not had before, doesn't it?

A. Yes.

Q. Now, it was about 1905 or 1906 that you started the Framingham Shoe Company?

A. It was about 1906 that the Framingham Shoe Company was started.

Q. Now, up to that time the R. H. Long Shoe Manufacturing Company had been taking some machines on lease from the United Shoe Machinery Company, hadn't they?

A. Yes, sir.

Q. And you wanted to escape the obligations of your leases, didn't you?

A. No, sir.

Q. Did the Framingham Shoe Company take leases of any machines from the United Shoe Machinery Company?

A. No, sir; not as far as I know.

Q. About that time you obtained control, did you not, of the Duplessis Shoe Machinery Company?

A. No, sir.

Q. I show you a copy of the "Evening News," a paper published in South Framingham, Massachusetts, of November 5, 1906, and call your attention to an advertisement published over the name of Richard H. Long. Did you publish that advertisement?

[A pause.]

Q. Did you publish the advertisement, Mr. Long?

A. My name is signed to it.

Q. Well, you caused it to be published, didn't you?

A. I think likely I did.

Q. Now, let me call your attention—

308 "VOTE FOR THE INTEREST OF YOUR TOWN—VOTE FOR VAHEY.

"The election of senator in this district is most important to the business interests of the towns of Framingham, Natick, Ashland, Holliston, Hopkinton, and Sherborn.

"The Framingham Shoe Company that is controlled by me has begun manufacturing shoe machinery. I have also become a director of the Duplessis Independent Shoe Machinery Co., a Canadian company, with a capital of $2,500,000, and I will finance and control that company. I am assured of all the money necessary to carry on the business of both companies named above in addition to the shoe factory now running and the new factory now being built."

Q. When you made that statement, was it true?

A. The statement is true.

Q. Wait a minute. When you made that statement, was it true?

A. Yes, it was a true statement, as far as my intentions——

Q. Wait a minute. I am not asking about intentions. It was true that you had become a director of the Duplessis Independent Shoe Machinery Company?

A. Yes, sir.

Q. And that that company had a capital of $2,500,000?

A. I believe so.

Q. And that you were assured of all the money necessary to carry on the business of both companies?

A. I was assured of it; but I didn't get it.

Q. "The Framingham Shoe Company is controlled by me and has begun manufacturing shoe machinery." That is true, is it?

A. That is true; yes, sir.

Q. That is, this simply wasn't a political advertisement, but it was true, was it?

A. It was, so far as I understood the matter at that time.

[Copy of "Evening News" dated South Framingham, Mass., November 5, 1906, containing above extract, is marked "Defendants' Exhibit 71."]

Q. And at just about that same time you removed the machinery of the United Shoe Machinery Company to your basement, or some other part of your factory?

A. Some time after that.

Q. And you did not return it to the Shoe Machinery Company?

A. Tried to.

Q. Well, you didn't return it?

A. No, sir.

Q. You simply have kept it stored there ever since?

A. They wouldn't allow it to be returned.

Q. I say you have kept it stored there ever since?

A. No, sir.

Q. Well, it is stored there to-day, isn't it?

A. No, sir.

Q. Where is it now?

A. It is moved to another factory.

Q. Well, under your control?

A. Yes, sir.

Q. Along with them, these twelve Chase lasting machines?

A. I don't know how many there are. I presume——

309 Q. Approximately twelve?

A. Whatever number was in the factory.

Q. Did you begin to install machinery from the Duplessis Company, which you said you controlled?

A. Yes, sir.

Q. Now, did you, about that time, cause a Goodyear welting machine to be shipped over to New York and there taken to pieces and copied?

A. No, sir.

Q. Was it done with your knowledge?

A. Not with my knowledge.

Q. Was any kind of a machine that you obtained from the United Shoe Machinery Company to your knowledge——

PUTNAM, J. What do you want to show by this, Mr. Choate?

Mr. CHOATE. There is a good deal of litigation between this gentleman and the United Company, and I want to show the cause of it. As bearing upon his feeling toward the company and the reasons why litigation followed, it is important. Our claim is that he took one of our machines over to New York and in a dark room had it taken down and copied, and that then there was suit brought against him.

PUTNAM, J. He denied it. You don't want the details, do you?

Mr. CHOATE. Not if he persistently denies it.

PUTNAM, J. You don't need to go into the details.

Q. Did you have a stitcher taken down and copies of it made?

A. I didn't have it.

Q. Well, was it done with your knowledge?

A. No, sir.

Q. Was it done in your factory?

A. I don't know. I have heard it was.

Q. It was a machine that had been leased to you by the United Company?

A. I don't know about that. I am not familiar with it.

Q. Now, just a minute, Mr. Long. You have heard that a stitching machine of the Goodyear Company while in Framingham, in and about your factory, was taken to pieces and copied, haven't you?

A. Yes, sir.

Q. And it was done by men in your employ, wasn't it?

A. I don't know. I have heard that it was.

Q. Well, you know the men who did it?

A. No; I don't know the men who did it.

Q. Well, you know the names of the men whom it is said did it?

PUTNAM, J. Come right to the point: Did any litigation arise over it or not?

Q. You subsequently had a machine which was copied from that machine, didn't you?

310 PUTNAM, J. That wasn't opened in direct examination.

Q. Give me the question again.

Q. You subsequently had a machine in your factory which was copied from that machine which you heard was taken down, didn't you?

A. There was a machine built in the factory of the machinery company that your company said was a copy of theirs.

Q. It found its way into your shoe factory, didn't it?

A. Yes, sir.

Q. And was being used there?

A. I don't know about the use of it.

Q. And the result of that was litigation between you and the United Company?

A. I don't know that that was the result. There has been litigation.

Q. How many suits are pending between you and the United Company?

A. I couldn't tell you.

Q. Well, five or six which are in the process of trial?

A. There are quite a number.

Q. In which it is claimed you have infringed the patented machines of the United Company?

A. I believe they claim that.

Q. How many machines besides this one have you had taken to pieces and copied?

PUTNAM, J. Mr. Choate, I think you are going too far.

Mr. CHOATE. Very well, sir. I won't press that question.

Q. Now, you told this story about your credit being attacked at Washington, didn't you, a year ago?

A. Yes, sir.

Q. And you were given the fullest opportunity to tell everything that you wanted to, weren't you?

A. I was asked questions.

Q. Well, you told your story as you wanted to; isn't that right?

A. I told some of the story.

Q. Did you mention to the Committee on the Judiciary, to whom you told your story, anything about the Chapin National Bank of Springfield?

A. I told them ——

Q. Did you mention ——

PUTNAM, J. It is out of the case, Mr. Choate.

Mr. CHOATE. Well, the talk with Mr. Dwinnell is out of the case.

PUTNAM, J. It is all out of the case.

Mr. CHOATE. Very well, sir. I think you are right. I won't press that.

Q. Have you got a catalogue of the shoe machinery that you purport to manufacture?

A. Yes, sir.

Q. Let us see it, please.

(A catalogue is produced by the witness.)

Q. Is this a current catalogue?

A. Yes, sir.

Q. I mean as of the present time?

A. Yes, sir.

Q. And how long ago was this in print?

A. One month.

Q. Is it the first catalogue that you have ever put out?

A. No, sir.

311 Q. Have you got the previous one?

A. Yes, sir.

Q. Let me see that, please.

[Another catalogue is produced by the witness.]

Q. The yellow-covered catalogue that you show me—when was this in print?

A. About two years.

Q. These catalogues are reasonably truthful, are they?

A. I didn't have them printed. I think they are reasonably truthful; yes, sir.

Q. Well, do you stand for them? Is it true that your company has for sale and is in the market to supply the machines that those catalogues purport to——

PUTNAM, J. How does that come in?

Mr. CHOATE. He was asked with reference to his manufacture of machinery, and what he had done with it, and where he had been able to market it.

PUTNAM, J. He wasn't asked about it at the present time.

Mr. CHOATE. On his direct examination he was, sir.

PUTNAM, J. About the present?

Mr. CHOATE. I think so.

Q. What I mean is, you stand behind these catalogues?

A. That first catalogue I have sold a good many machines from. In that one we are not yet ready to put the machines out.

PUTNAM, J. Where was that brought out on direct examination?

Mr. CHOATE. He testified he had been in the shoe machinery manufacturing business since 1907, and he testified about marketing some of his machines and not marketing others.

PUTNAM, J. Well, about marketing at the present time?

Mr. CHOATE. I think he was speaking of the period all the time from 1907 to the present.

Q. The machines in the blue-covered catalogue are machines that you have either manufactured or are ready to manufacture for customers?

A. Some of these we are ready to supply customers and some we are building.

Q. There seems to be a list of fifty machines on page 3. Are those machines there described on page 3 machines for the manufacture of welt shoes?

A. Yes, sir.

Mr. CHOATE. I should like to put these two catalogues in the case, if the court please. The green-covered one should be numbered first. It is the later one, but the one first produced.

[Green-covered catalogue of The R. H. Long Machinery Com-
Company of machinery and needles is marked "Defendants' Exhibit 72."]

312 Yellow-covered catalogue of The R. H. Long Machinery Company of Waldorf rapid lockstitch and repair machines is marked "Defendants' Exhibit 73."]

Q. I call your attention to page 367 of the yellow catalogue, Exhibit 73, to plate 5. What does that purport to show?

A. Parts of a machine, wrenches, screwdrivers——

Q. Parts of what machine?

A. Parts of a rapid lockstitch machine.

Q. The Waldorf rapid lockstitch machine?

A. Yes, sir.

Q. I call your attention to the catalogue of the Goodyear outsole rapid lockstitch machine, plate 7, and ask——

PUTNAM, J. What is this for, Mr. Choate?

Mr. CHOATE. In the first place, to show the animus and state of mind of the witness; and, in the second place, to show the extent to which he is supplying or is able to supply customers with shoe machinery.

PUTNAM, J. After you have got these things in you have got to ask him to explain them. Why not ask him to explain them without any further interrogation about them?

Mr. CHOATE. I assumed that your honors would when convenient examine the catalogues.

PUTNAM, J. No, sir.

Mr. CHOATE. Or that counsel would call the catalogues to your attention.

PUTNAM, J. The time to call them to our attention is now, so we can see what they are good for.

Mr. CHOATE. I will do that, sir.

PUTNAM, J. What is your purpose, to show the competition or to show the extent of his dealings?

Mr. CHOATE. To show the extent of his dealings, and his ability to deal, and also to show his attitude toward the United Shoe Machinery Company.

PUTNAM, J. The extent of his dealing—what do you claim about that?

Mr. CHOATE. Let me show your honors this catalogue.

PUTNAM, J. I don't care about the catalogue. What do you claim have been his dealings?

Mr. CHOATE. We claim he represents he is prepared to supply not less than fifty machines for the manufacturing of welt shoes, most of which relate to the bottoming room—the rapid out-sole stitcher, welt-sewing machine, buffer, scourer, lasting machines, channelers, turners, and so on. There are cuts in this catalogue of machines for performing a great many of the operations in the bottoming room, of which it is said that the United Company has control.

PUTNAM, J. What do you say about this, gentlemen?

BROWN, J. On pages 1134 and 1135 he was interrogated as to his efforts as a manufacturer and seller of shoe machinery.

Mr. FOWLER. We are not objecting if Mr. Long is allowed to state fully the number of machines he has out and the number he has on hand that he can put out.

PUTNAM, J. We don't want anything except what relates to machines or parts that the Shoe Machinery Company controls.

Mr. FOWLER. As I understand it, it wholly relates to that character of machines.

313 PUTNAM, J. What character?

Mr. FOWLER. That we allege that the Shoe Machinery Company does control. That is my impression; I am not sure.

PUTNAM, J. Get through it as quickly as you can, Mr. Choate.

Mr. CHOATE. For instance, he does market an out-sole rapid lock-stitch machine.

PUTNAM, J. That is not one of the Shoe Machinery Company's machines.

Mr. CHOATE. Our machine which makes the welt is the Goodyear out-sole rapid lockstitch machine; that is the name of it.

PUTNAM, J. He doesn't advertise the Goodyear lock-stitch machine?

Mr. CHOATE. He doesn't call it the Goodyear.

PUTNAM, J. There has been a good deal of testimony about out-sole machines which have nothing to do with this case.

Mr. CHOATE. He doesn't call it a Goodyear; he calls it an out-sole rapid lockstitch machine. Then he advertises a welt and turn machine. We also have a Goodyear welt and turn machine; then the insole channeling machine——

PUTNAM, J. Get at it as fast as you can.

Q. I call your attention to the Goodyear out-sole rapid lockstitch machine in this catalogue, plate 7. Is your plate 5 an exact reproduction of that?

A. It looks like it.

Mr. CHOATE. I ask your honors' attention to that. That is his catalogue; this is ours. It is obvious that his plate 5 is a reproduction of our plate 7.

Q. You even went so far as to copy the numbers of the parts, didn't you?

A. What do you mean by that?

Q. I mean just exactly what I say. You have got the same numbers for each of the parts. This is 1269 in yours and it is 1269 in ours?

A. Yes.

PUTNAM, J. The question is whether he has put out the same machines which the United States says the defendant company controls.

Mr. CHOATE. This goes a little bit more into detail than that. However, I won't spend time on it.

PUTNAM, J. It is only a matter of detail.

Q. You said something about what you had done with reference to getting your welter or your stitcher on the market?

A. Yes, sir.

Q. You are familiar with the names of some of the parts of the welter and stitcher, aren't you?

A. I presume I am with some of them.

Q. You know what the Baltimore attachment is?

A. Yes, sir.

Q. Did you offer your stitcher with the Baltimore attachment on it?

314 A. I did not.

Q. Or the Holmes attachment?

A. No, sir.

Q. Isn't it a fact that practically every up-to-date shoe manufacturer of welt shoes wants the Baltimore and the Holmes attachment on the stitcher?

A. No, sir.

Q. Did you offer on your welter the device called the thread release?

A. I don't think so.

Q. Or the take-up, the device known as the take-up, on the welter?

A. I didn't offer it.

Q. You didn't offer it in connection with the welter and stitcher you put out?

A. I am not familiar with the details of those machines.

Q. You are familiar enough to know those particular attachments of which I have just spoken?

A. The Baltimore edge and the Holmes; yes. I will explain that if I have an opportunity.

PUTNAM, J. You will have an opportunity, Mr. Long.

Mr. CHOATE. That is all, Mr. Long.

Direct examination resumed:

Q. Mr. Long, how many rapid outsole stitching machines have you on hand now that you could place upon the market if you had orders for them?

Mr. CHOATE. Isn't that a matter which should have been gone into on direct examination?

Mr. GREGG. You have been going into it on cross-examination.

PUTNAM, J. That is the reason I checked the cross-examination.

Mr. CHOATE. If your honor please, the question of Mr. Long as a manufacturer of shoe machinery was gone into by the United States in its direct; he was asked as to what kind of machines he manufactured, and he was asked about what he had done in the way of marketing them.

PUTNAM, J. Yes, but you developed some entirely new matter.

Mr. GREGG. I didn't ask him how many he had on hand, and the catalogues have gone in here showing he has a complete line of shoe machinery. Now, I want to show how many machines he has on hand and could put out if he had orders for them.

PUTNAM, J. Go on, Mr. Gregg.

A. I have on hand three or four hundred.

Q. What kind of machines?

A. Rapid outsole lock-stitch machines.

Q. How many welting machines do you have on hand?

A. Thirty or forty.

Q. And lasting machines?

A. Twenty to twenty-five or more.

Q. And heeling machines?

A. Three or four.

Q. And metallic fastening machines?

A. I don't think we have any fastening machines; we are building them.

Q. Do those machines you have enumerated include the machines you are using yourself in your factory?

A. No, sir.

315 Q. You were asked on cross-examination whether or not you had any interest in the Duplessis Shoe Machinery Company?

A. Yes, sir.

Q. What was the amount of the interest you had in that company, or have now?

A. I was given one share of stock so I could qualify.

Q. Is that all you have been given?

A. Yes, sir.

Q. Do you own that share of stock now?

A. I don't know whether I do or not.

Q. What has become of the Duplessis Company, if you know?

A. I understand that they have been removed to Canada.

Q. Do you know whether or not they are doing business in this country?

A. I am informed they are not.

Q. A number of letters have been introduced, written by you to the United Shoe Machinery Company and the Eppler Welt Machine Company and the United Shoe and Eppler Welt. Those letters were practically all of them written shortly after the United was formed, were they not?

A. I believe they were.

Q. They all show dates, with the exception of two or three, in 1899?

A. Yes, sir.

Mr. CHOATE. We will put in all we have got, if you want, Mr. Gregg. I didn't want to make too much of a mess of that stuff. We will show every order——

Mr. GREGG. Will you show that these requests for parts were filled?

Mr. CHOATE. Yes.

Mr. GREGG. I think that ought to go in with the letters.

Mr. CHOATE. We will put them in now, if you want them—the letters.

Q. You were asked what you had done with the United machines you took out of your factory when you installed your machines. Why didn't you return those machines to the United Shoe Machinery Company?

A. I called at the office of the United Shoe Machinery Company to get permission to return them.

Q. Whom did you see there?
A. I saw Mr. Donham.
Q. What did he tell you?
A. He said they wouldn't do anything about it. I don't remember just his words.
Mr. GREGG. That is all.
Mr. CHOATE. Just one question, please.

Cross-examination resumed:

Q. Were you the possessor of this one share of stock in the Duplessis Company when you published that advertisement?
A. I think so.
Q. Is that a fair illustration of the extent to which your words exceed the facts, do you think?
A. If I am allowed to explain, I can.
Q. Just answer that question.
Mr. GREGG. If the Court please, I don't think that is material at all.
PUTNAM, J. That is rather too broad a field.

316 JUNE 6, 1913.

FRANK L. HARMAN, witness for the United States.

My name is Frank Leslie Harmon. I live at Beverly. Since I have been there I have been employed by the United Shoe Machinery Company in inventing and developing machines and collecting material for a history of the United Shoe Machinery Company. I am now in the employ of that company. I have invented buttonhole machines, buttonhole finishing machines, tacking and nailing machines, sewing machines, finishing machines, etc. I developed to a certain stage of perfection a skiving machine, skiving and folding machine, buttonhole machine, and buttonhole-finishing machine. I have most of these machines. I conferred with Mr. Winslow in 1905 about a skiving machine. I was then engaged in experimental work for myself on Rantoul Street, Beverly. I had no practical business ability, that is, experience in business, and I came to him with the idea of getting information. He gave me some very good advice. Mr. Winslow said I was foolish to try to go into the machinery business with the little capital I had, that all the companies were coming together to build machinery on a large scale and that he thought I would lose time and money if I did. The substance of his conversation was that I could not compete with millions of dollars with a few hundreds or a few thousands in manufacturing shoe machinery.

I have that skiving machine yet. Later I sold a skiving machine that I invented afterward to the United Company. That was two years ago; also the Eureka die block.

(Here the United States offered to prove that witness sold to the United Company a skiving machine and Eureka die block for one hundred dollars because he could not market his machinery in opposition to the United Company. The evidence was excluded on the ground that the matter was not alleged in the bill.)

317 Cross-examination:

By the large companies which were coming together, I meant those which made up the United Company.

My conversation with Mr. Winslow was prior to the coming into existence of the United Company.

318 JUNE 6, 1913.

S. BURTON MCNAMARA, witness for the United States.

My name is S. Burton McNamara. I reside in Haverhill and am in the S. B. McNamara Company which manufactures turn shoes and is interested in numerous shoe companies for boys' shoes. It also manufactures McKay sewed shoes. Our daily capacity at present is about one hundred and fifty dozen in turn and seventy-five dozen in McKay

The greater part of our machinery is nonroyalty machinery. We use two nailing machines, two slugging machines, and a burnishing machine from the United Company in the turned factory. The nonroyalty machines we use are the Lincoln, the Duplessis, and the Fox machines on sewing, and nonroyalty heel burnishers, nonroyalty shaving machines, and practically all the rest nonroyalty machines.

We do not make any welt shoes. We use the Duplessis stitcher. Five or six years ago, after we had installed it, the United Company made some objection in writing. We got a notification. I think it was from one of their attorneys. Later it was an infringement suit. We now have the United Company's heel nailing machine. At that time we had two but later we had to have another and got a nonroyalty machine and paid nine hundred and sixty dollars for it but it did not do the work so later we got one from the United Company which did the work.

Cross-examination:

The notice I received was an infringement notice relating to the Duplessis machine. It was a notice that the Duplessis machine I was using was an infringement. The machine I paid nine hundred and sixty dollars for was a Fox machine, and it was not satisfactory on high heels. We were running

319 nonroyalty machines on stitching and, of course, as I understood it we could have the United Company's heel nailing machine for $500 outright and continue to use our

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machines, or if we saw fit we could put in their turned sewing machines and have it on a royalty basis alone. We decided we would take it on the $500 basis. The two slugging machines, two nailing machines, and the burnishing machine that we have from the United Company we had had on leases since before the United Company was formed. They were machines that came from the old McKay Metallic Association. We have continued to hold them on the old leases ever since. We have not been disturbed in their use. We have used them in connection with all kinds of other machines, as we agreed to.

320 JUNE 6, 1913.

HARRY E. CILLEY, witness for the United States.

My name is Harry E. Cilley. I reside at Rindge, New Hampshire. I have been in the shoe machinery business, but have no place of business at present. I started in that business in 1893 at 118 South Street when I had a small manufacturing plant, manufacturing weighing machines and scales, known as the American Scale Manufacturing Company. In April, 1893, we started a draughtsman at work on the designing of a leveling machine. I was associated in the shoe machinery business with Mr. Edward C. Judd under an agreement. For two years there was a patent interference suit and the machine was only used experimentally. On account of something lacking in the design of the machine and its operation, in 1895 the machine was redesigned. That machine was put in the factory of D. B. Clausen and Company at South Braintree and was operated successfully until a different form of shoe going through the factory made necessary changes in the mechanism and it was brought to Boston and the changes made.

321 After the formation of the United Company I had a conversation, in the fall of 1901, with Mr. E. P. Hurd at Mr. Hurd's office.

Q. What was the occasion of your visit to Mr. Hurd?

A. It was because——

Q. For what purpose did you go to see him?

A. Well, there is a little explanation attached to that.

Q. Well, go ahead.

A. After the formation of the United Shoe Machinery Company it changed conditions.

Mr. CHOATE. I will have to object to this.

BROWN, J. Give the conversation.

Q. What was the conversation you had with Mr. Hurd at that time, the substance of it?

A. I went to Mr. Hurd's office with Mr. Judd, and after, as I remember it, the introduction, Mr. Hurd said: "Why is it you

didn't place this matter before Mr. Winslow? You knew Mr Winslow"——

Q. What matter was that—place what matter before Mr. Winslow?

A. Mr. Judd had seen Mr. Hurd before, and I replied that I didn't know Mr. Winslow, and that as I understood it a mutual friend of Mr. Judd's and Mr. Winslow's had mentioned the matter to Mr. Judd.

Q. Well, mentioned what matter?

A. The matter that we were—that was before Mr. Hurd.

Q. Well, what was it, what was the matter?

A. You mean in effect, or——

Q. No; what was the subject of your conversation with Mr. Hurd; what did you discuss with Mr. Hurd?

BROWN, J. What were you talking about?

The WITNESS. We discussed almost everything that was connected with the shoe machinery situation.

PUTNAM, J. That is what we are doing now.

Mr. GREGG. I agree with your honor.

Q. Did you discuss with Mr. Hurd the sale of your shoe machinery business?

A. Yes.

Q. Was that the subject of the conversation that you had with Mr. Hurd?

A. That was part of it; yes.

Mr. Hurd said: "I have to report that all the reports of those who have investigated the machine at the M. N. Arnold factory are most of them satisfactory." That was our machine, known as the Universal leveling machine. He said their patent department gave us a clean bill of health and asked if we had a proposition to make. I said that I had none, but wanted to place

322 the matter before Mr. Hurd, as I was satisfied the United Company controlled the welt manufacture and to a considerable extent the McKay manufacture. Mr. Hurd said that the McKay situation was perhaps affected more than I thought. I gave Mr. Hurd, who was assistant treasurer of the United Company a statement of costs incurred in promotion of our business. I made no proposition to Mr. Hurd. Mr. Hurd made no proposition to me except that he said at the last meeting with him, "Cilley, you are thick. If you were offered fifteen or twenty thousand dollars I think under the circumstances you ought to be very well satisfied." I said, "Mr. Hurd, that would be outrageous." He said, "Well, I think we will offer you thirty thousand dollars. You will hear from us again." That was the way the matter was left. I have never talked with or heard from

him again. Mr. Hurd said at the meeting, "This is not an eleemosynary institution"; and he said, "You can't do any business except on our sufferance, and you can't get a new dollar for an old one." Mr. Hurd spoke of the situation which existed in the shoe machinery business. And, of course, there was competition between these three companies—and that the competition would have increased greatly, resulting eventually in a fight or war between these various companies.

(It was admitted by counsel for the defendants that Mr. Hurd at that time was a director and member of the executive committee as well as assistant treasurer of the United Company.)

JUNE 10, 1913.

Cross-examination:

I have been engaged in litigation with the United Company for a long time.

Q. And you have been, I suppose, preparing yourself to testify in that case, haven't you?

A. I prepared myself, I believe, some months ago.

Q. And you have been getting your story ready to tell in that case?

A. I have been over all the matters; yes, sir.

My case has been pending since 1903 in this court—the District Court of the United States. I had several talks with Mr. Hurd. Naturally, I have talked a good deal about my case.

323 JUNE 10, 1913.

JOSHUA S. HOLT, witness for the United States.

My name is Joshua S. Holt. I live in Boston. I am a dealer in shoe machinery. I talked with Mr. Bailey, of the United Shoe Machinery Company, in reference to Mr. Long's business about two or three years ago, at the office of the United Company. I do not know what position Mr. Bailey had with the United Shoe Machinery Company. I saw Mr. Bailey at the office of the United Company on Lincoln Street, in Boston. As to what purpose I had in going there, I do not know that I had any special business there that day, but I often went there on matters concerning that kind of business, buying and selling their goods. I buy from them and sell their goods. It was during one of those visits to the United offices that I had this conversation with Mr. Bailey.

(After it was said by Mr. Choate that Mr. Bailey was not an officer but a salesman of the United Company, the United States offered to prove that on the occasion mentioned Mr. Bailey said to the witness in substance that it was useless for Mr. R. H. Long to continue in the shoe machinery business for the reason that he

would not be able to get money to carry on the business, due to the fact that the United Company and its interests controlled the banks of Boston and to the suggestion that he might get it in New York, replied, "We control the banking interests in New York as well as in Boston." The evidence was excluded, on the ground that Bailey was not shown to be an officer of the United Company, merely an employee, and that the conversation was not directly connected with any business of the United Company.

324 JUNE 10, 1913.

PETER TESSIER, witness for the United States.

My name is Peter Tessier. I reside in Haverhill, Mass. I was engaged in shoemaking, but am not working at present. I was engaged in shoe manufacturing in Haverhill until five or six years ago, when I became blind. I had the Goodyear and Duplessis sewing machines. I had the Goodyear first. Octave Paquette, the United agent at Haverhill, after I installed the Duplessis sewing machine, came and gave me a letter signed by the United Shoe Machinery Company.

PUTNAM, J. What is the object of the testimony? What is the reason for objecting to it?

Mr. GREGG. I propose to show that they objected to his use of the Duplessis machine.

PUTNAM, J. You have shown beyond all doubt, so far as the case now stands, that the Shoe Machinery Company insisted upon those conditions, enforced them, and the construction they gave to them. What is the object of piling these up? Why should you object to it, Mr. Choate? It is simply carrying out the terms of the lease.

Mr. CHOATE. I do admit that they carry out the terms of the leases.

Mr. GREGG. If the defendants will admit that in all cases they have insisted that the provisions of those leases have been strictly complied with, we can eliminate all this testimony.

PUTNAM, J. They would not admit that and it would not amount to anything if they did. You have shown that in the case of these large manufacturers it was insisted upon. The question is not whether it was always insisted upon, but whether it restrained trade in any instance.

Mr. CHOATE. I will make an admission if it will help Mr. Gregg and he will accept it: Mr. Tessier had some welt sewing and turn machines with our auxiliaries. We got our royalty from the use of the principal machines. He discontinued the use of the principal machines and put in a Duplessis machine, but con-

tinued to use our auxiliaries, for which he paid nothing. After advising him that that was contrary to both the letter and the spirit of the leases, he continuing the practice, Mr. Brandeis' office brought a replevin writ and our machines were replevied, he consenting to judgment. That is the whole story, shown by court records. Now, if you will accept that I will give you that as an admission, Mr. Gregg.

PUTNAM, J. What do you say about that, Mr. Gregg?

Mr. GREGG. If the court please, as I understand it this man was using more than the Goodyear auxiliary machines at that time. He was not only using the machines in the Goodyear department, but also was using other machines. I have a copy of the letter here that was copied from an affidavit that was filed. I don't know whether Mr. Choate will admit that it is a correct copy or not.

Mr. CHOATE. You may put this in as an exhibit if you wish.

(Copy of letter dated March 3, 1904, from United Shoe Machinery Company, S. W. Winslow, president, to Peter Tessier and Company is marked "Plaintiff's Exhibit 158.")

The WITNESS. The United Company removed all its machines from our factory at that time. I had machines that took the place of them.

BROWN, J. Could you get machines to take the place of them?

The WITNESS. From Duplessis.

Q. Machines for performing similar work?

A. Similar work.

Q. Could you get all of those machines from the Duplessis Company that you had from the United for performing similar work?

A. Yes, sir.

325 Cross-examination:

When the United Company took its machines out we already had the Duplessis machines in our factory.

(It was agreed by the United States that Mr. Brandeis' office brought a replevin writ in behalf of the United Company and the machines were taken.)

326 JUNE 10, 1916.

FRANK R. HILLIARD, a witness for the United States.

My name is Frank R. Hilliard. I reside in Haverhill, Mass. I am a manufacturer of boots and shoes. I make women's welts, turns, and McKays. My factory has a capacity of about four thousand pairs per day. I engaged in the turned business, using machinery, about 1891. I was making turns, welts, and McKays in 1899, when the United was formed. I had

Goodyear welt sewing and out-sole stitching machines only at that time. We were not using lasting machines. We had the National nailer—no metallic machines. At present we are using exclusively the United machines. About a year and a half ago we attempted to install the Haverhill Shoe Machinery Company's turn sewing machine. At that time we had machines from the United Company for performing work similar to the work performed by the Haverhill machine. I had a conversation with Mr. Winslow after we had been running it four or five months. I was in his office and he brought the matter up. Mr. Winslow stated that we were using that machine contrary to our lease and that we would either have to change the lease and the contract with them, or stop using the machine. The Haverhill machine was put in on trial and it did satisfactory work. As to whether we had bought the Haverhill machine, at the time this matter came up we had made no arrangement whatever with the Haverhill Company. We could have it on royalty or by purchase.

Q. Was it this objection of Mr. Winslow's that caused you to return the Haverhill machine?

A. Why, partially; perhaps wholly.

Q. Sir?

A. It certainly was partially.

Q. Well, what were the other reasons?

A. Well, as I said before, the machine was in on trial, and we hadn't come to any absolute conclusion in regard to the matter.

Cross-examination:

I had this sewing machine for turned shoes for four to six months before I had this talk with Winslow without anything in the way of formal protest or objection. The occasion of my talk was an occasion when I had gone to the United Company's office on business and happened to meet Mr. Winslow. I had the Goodyear turn machine on a noninitial premium lease 327 where I simply got the machine and paid for it according to the extent I used it. I had United Company auxiliaries with it. I took the Haverhill machine on trial and used those auxiliaries with the Haverhill machine. I was not paying a copper to the United Company for those auxiliaries. Mr. Winslow called my attention to the fact that I was not observing the obligations of my lease, which was to use the Goodyear auxiliaries only with the Goodyear principal machine. I said, "That is true." I was told that if I wanted to use the Haverhill machine I could change my lease and take another form of lease which would make it all right. He offered to give me that form

of lease. I took it under consideration and decided to retain the old form. There was no threat or coercion and the election was my own choice and was satisfactory to me. It was left to me to decide which I preferred. Everything was perfectly courteous and businesslike.

Direct examination resumed:

Mr. Winslow submitted a proposition to me for a change of these leases. The change which was to be made, provided we retained the Haverhill machine, was that we were to pay for the machines which we had. He did not say anything about paying an installation charge for the machine. The regular price for the machine, as I understood it. As to whether I mean by that, to buy the machine outright, I think so. We had all kinds of their machinery in. It would have been all kinds of machinery that we had. I can't state positively whether Mr. Winslow offered to sell me Goodyear turn sewing machines at that time. The way he stated it to me, it wasn't a proposition that I cared to consider at all. He did not fix the price for the machines; just said that he would have to change the leases. That was all that was said in a definite way in regard to the machines or the price to be charged for them that I remember.

328 JUNE 10, 1913.

ERNEST BOTTOMLEY, a witness for the United States.

My name is Ernest Bottomley. I live in Haverhill. I am a shoe manufacturer. I make McKay shoes. I first engaged in the shoe manufacturing business in 1888. I was making turn shoes in 1903. I had part United Machines, part Duplessis at that time. I had the turn machine, the loose nailer, the slugger and staple tacker from the Duplessis, also nailing and stitching machinery. I had a sole rounder from the United Company and several others. Prior to getting the Duplessis stitching machine I had a Goodyear stitching machine which I ceased to use when I got the Duplessis. Colonel King, of the United Company, came to the factory and talked about the use of the Duplessis and said I would have to use one or the other. The United machines were taken out in 1903 or 1904 and I continued to use the Duplessis. Later I changed to the manufacture of McKay shoes, about 1906. I went to the United Company then to obtain machinery for the manufacture of McKay shoes. I saw Mr. Wilson. Mr. Wilson said in substance that I should have to take out the Duplessis machines before I could get the machinery for McKay shoes. I would have to pay royalties for the shoes that were sewed on the Duplessis machines after the United Machines were withdrawn. I couldn't say that he said that. I was given to understand that.

I paid the royalties. I disposed of the Duplessis machines. I use United Company machines exclusively now except some machines we buy outside such as a buffer, rounder, or something of that kind. The sewing machines we use are not United machines. We use McKay machines, the old McKay.

Cross-examination:

We are making only McKays now. Gave up making turn shoes in 1903 or 1904. The turn shoe business was not steady and we thought we could get business in McKays practically ten or eleven months. It was a change in business policy owing to lack of demand for turn shoes. I thought McKays would
329 be better business for us. The Duplessis stitcher is not used in making McKay shoes. We used it for turn shoes only, and when we stopped making turn shoes we hadn't any further use for the Duplessis stitcher. We have machines in the stitching room where uppers are made which we did not get from the United Company. Outside of the eyeletter, everything else comes from some other source. There are a great many machines in the stitching room and very important ones. That is where the upper is cut out and the linings inserted and the parts sewed together. The tips are attached there, and whatever decorations are put on the upper are put on there. A number of finishing machines we get from sources other than the United Company. Our output is about seven hundred pairs. Including the stitching room machinery, less than fifty per cent of all our machines were obtained from the United Company. When I had this talk with Colonel King I had first installed Goodyear machines for doing turn work and had taken one or more turn sewing machines and some of the auxiliaries that went with them. The royalty paid for the use of the turn sewing machine and the auxiliaries is kept track of by the indicator upon the sewing machine, the principal machine. After I had used those for a while I took one or more Duplessis turn sewing machines and stopped using the turn sewing machines obtained from the Goodyear Company. I do not think we used any of the Goodyear auxiliaries with the Duplessis turn-sewing machine. I can't say definitely now.

Q. You won't be certain of that, will you, sir?

A. No, sir.

Q. You either used them or stopped using them; that is true?

A. Surely.

Q. In the first alternative, of course, you weren't paying any royalty to the Goodyear Company for the use of its Goodyear machines?

A. If we used them, we were.

Q. But there wasn't any way of keeping track of their use?
A. The loose nailer and the staple machine.
Q. I am speaking of the auxiliary machines that go with the turn set.
A. We shouldn't be using those, as near as I could recall, after putting in the other.
Q. Let us take it that you weren't using them. That is, when you put in the Duplessis machines you simply stopped using the Goodyear machines?
A. Yes.
Q. Why did you stop using them? Because you didn't want to use them any more?
A. We had no choice in the matter.
Q. You preferred to use the Duplessis machines?
A. Yes, sir.
When we stopped using the Goodyear turn machine and auxiliaries they remained idle about two months, and were then removed by the Goodyear Company. Before they were taken out I wrote the letter which is produced. [Letter reads:]

"HAVERHILL, *Jan. 25, 1904.*

"UNITED MACHINERY CO.

"GENTLEMEN: We have carefully considered the matter about which your Mr. King was in to see us about the 21st inst., and have concluded to continue using the Duplessis sewing machine. We also give notice that we shall not pay any royalty for shoes sewn on machines leased to Eldredge & Demeritt hereafter, as we have discontinued using same.

"Respectfully, yours,

"(Sgd.) E. BOTTOMLEY & Co.,
"By E. B."

This letter, dated January 25, 1904, from E. Bottomley and Company, to the United Shoe Machinery Company, was introduced and is marked "Defendants' Exhibit 74."

330 Our turn stitcher and auxiliaries had originally been leased to Eldredge and Demeritt. We held them under an assignment. This letter was a notice that we proposed to use the Duplessis machine and wouldn't pay any more royalty on the Goodyear machines, and the Goodyear machines were taken out. I had two talks with Colonel King about the matter, one at his office and one at ours. I do not remember whether the Eldredge and Demeritt lease was the noninitial payment form or not. I couldn't say whether I had any talk with Colonel King as to whether I would take Goodyear machines on initial premium lease. I can't say one way or the other. I did not understand Colonel King to suggest that I could keep the Good-

year machines together with the Duplesses if I took the Goodyears on the initial premium leases. I don't say that suggestion was not made to me; I say I didn't so understand it. I understood I should choose between the Goodyear and the Duplessis machines, that I was free to choose whichever of those I liked. I considered it and made a free choice. As a business probability if I was running shoes through the Duplessis machines I wouldn't use the Goodyear machines.

Suit had been brought against me for infringement of the United Company's patents, with respect to devices used on the slugging machine and the loose nailer. There were two suits, and the sum paid when I took the McKay machines may have been partly in settlement of them. The infringement suits were then discontinued.

Direct examination resumed:

I entered into a written contract with the United Company when I took the machines for McKay shoes. About sixty to seventy per cent of our bottoming-room machines are from the United Company. All our lasting, heeling, and metallic fastening machines were supplied by the United Company. We have none of the United Company's sewing machines. We have two old McKay sewing machines not obtained from that company.

331 Cross-examination resumed.

Q. How many lasting machines have you got?

A. Two.

Q. How many heeling machines have you?

A. One.

Q. That makes three you have from the United. How many metal-fastening machines have you got?

A. One.

Q. That makes four. What else have you got from the United?

A. Two tackers.

Q. That is six. What else?

A. Well, some stock-fitting machinery.

Q. Is that machinery that you bought?

A. Part of it. The rounders we use are not the United. But the channeling machines and some of those machines——

Q. Can you think of any machines except those six upon which you pay royalty?

A. No, sir.

Q. Haven't you got more than twelve machines in your factory where you turn out over a thousand pairs of shoes?

A. I didn't say a thousand.

Q. How many did you say?

A. Seven hundred.
Q. Well, 700, then. You have more than twelve machines in your factory?
A. I presume so.
Q. You have over a hundred, haven't you?
A. Including stitching room machinery, we probably have.
Q. One hundred and fifty?
A. No.
Q. Now, you have named six machines you get from the United out of 100. Can you name any more?
A. Well, there are several more small machines in the stock room that come from the United.
Q. Ones you buy, or ones you pay a royalty on?
A. Some we buy; some we make initial payment; some we pay rental.
Q. Can you name any others you pay rental or royalty for?
A. I can't recall now.
Q. When you say "several" you mean two or three?
A. May be two or three; may be four or five.
Q. Very well. Take the larger number. That would be not over ten machines out of a hundred?
A. I can't state exactly—only approximately.
Q. So am I. That is ten out of a hundred?
A. Possibly.

Direct examination resumed.

Q. What is the daily capacity of your factory?
A. About 700.

332 JUNE 10, 1913.

JAMES H. CUNNINGHAM, a witness for the United States.

My name is James H. Cunningham. I reside in Brockton, Mass. I am a shoe manufacturer, connected with the Stacy-Adams Company. I have been general superintendent of that company for about thirty years. Its daily capacity is about twelve hundred pairs per day. We manufacture welt shoes exclusively.

Prior to the formation of the United Company we had used the McKay sewing machine, the Campbell machine. We also used the Goodyear and Eppler machines. We used the McKay heeling and metallic fastening machines. We didn't use the Eppler until after the United Company was formed. We got the Eppler two or three years after the United Company was formed.

(The witness was later recalled, and testified:

Q. Mr. Cunningham, do you wish to correct any part of your testimony that you gave the other day?

A. I do.

Q. Please state what it is.

A. As to the putting in of the Eppler machines, I was wrong about the date the other day. We put them in in 1892, and we discontinued the use of them about 1900.)

We have no Eppler machines now.

Q. Was the Eppler machine used for performing the same operation in the manufacture of a shoe that the Goodyear shoe machines performed?

A. Yes, sir.

Q. And did the Eppler machine do its work as effectively as the Goodyear machine?

A. Why, some things about it was, and some things wasn't.

Q. And was that true of the Goodyear, too, as well as the Eppler—some things about the Goodyear were as good as the Eppler and some things were not?

A. No. I think everything about the Goodyear was better.

We used the Eppler machines two or three years. After the United Company was formed they took the Eppler machines out and we put in the United system because it was more complete, and did the work better. I think we had bought the Eppler machines.

We had been operating in our factory a Seaver process lasting machine. We gave it up to the United Company. Toward the latter part of our using the Seaver machine it would take some time to get parts from the United Company for it. We are now using the United Company's welting, stitching, lasting, heeling, metallic fastening, and eyeletting machines exclusively.

Cross-examination:

We have about two hundred and fifty machines of different kinds in our factory. We have a great many machines other than those we get of the United Company. We have stitching machines from other people. In saying that we use
333 United Company machinery exclusively I refer to the bottoming machinery and not to fitting room machinery. When speaking of machines we had prior to 1899 I was speaking of experience over quite a number of years. We discontinued the use of the Campbell machine before 1899. When we stopped using the Seaver process lasting machine we took the No. 5 lasting machine. We now have some fifteen No. 5s. It is a better machine. As a practical shoemaker, I should say, generally speaking, that it is the best lasting machine of the bed

type. We didn't have but one Seaver anyway at that time. The Seaver machine had practically worn out. The Eppler welt machine was satisfactory, but the outsole stitcher was not. Both the Goodyear welter and stitcher were satisfactory, and the Goodyear machines as a group worked together better as a whole system. We preferred the Goodyear system because all the machines were designed to work together and did work together.

334 JUNE 10, 1913.

HERVEY E. GUPTILL, witness for the United States.

My name is Hervey E. Guptill. I manufacture women's turn shoes. My daily capacity is twenty-five hundred to three thousand pairs. We use the loop lock Duplessis and Haverhill machinery for bottoming. We don't have and have never had United Company machines in our factory. I was engaged in shoe manufacturing at the time of the formation of the United Company. I have never used the Eppler welt machine.

Cross-examination:

I am making only turn shoes. We have two factories, one at Seabrook, New Hampshire, and the other at Haverhill, Mass. We have been making turn shoes for about twelve years without using machines made by the United Company. Our business has been growing and is fairly successful. I have never been interfered with in any way by the United Company and had no difficulty in equipping my factory with machines.

335 JUNE 10, 1913.

EDWIN A. WEBSTER, witness for the United States.

My name is Edwin A. Webster. I reside in Haverhill, Mass. I have charge of the machinery in the various factories of Charles K. Fox (Inc.), of Haverhill, and am a director of the Haverhill Shoe Machinery Company. I have been connected with that company since its formation in 1907. Previous to that I was machinist for Charles K. Fox and operator on shoe machinery. I commenced to work on his machines in 1902. I invented the Haverhill channeling machine for channeling turn shoes. We use it in the Fox factory and are putting it on the market. I invented about 1905 a heel-nailing machine for attaching heels to shoes which I sold about 1907 to the United Company. In 1899 I was engaged in operating machines and instructing for Spaulding and Swett, shoe manufacturers. We installed the McKay system about that time. The lasting machines used by us were called "nigger-head" machines. At that time I had not come into contact with other lasting machines.

The Haverhill Shoe Machinery Company manufactures turn channel machines for turn soles, welt innersole lip turner, welt groover and beveler, welt beaters, turn sewers and welters, heel-nailing machines, heel-attaching machines, heel-trimming machines, heel-seat keying machines, keyer or beader, and turned sole-molding machines. We manufactured no lasting or metallic fastening machines. In heeling machinery we make heel-nailing machines and heel-trimming machines. We have made the heel nailer about two or three years. It is a large machine weighing about thirty hundred. We have put about twenty-five on the market, through our advertising and agents soliciting orders. We put them out on royalty. We also sell them outright at nine hundred dollars.

The heel-shaving machine is a machine that follows the heel nailer—it is the next operation. It is a large ma-
336 chine on a pedestal. We have three out at present. Two are operated at present and one was burned in a fire in St. Louis. All those heeling machines I have mentioned are operated by shoe manufacturers. We have been putting out the heel-shaving machines a little over a year. The first heel-shaving machine went in the Non-Royalty Factory in St. Louis. It takes several days to make a heel-nailing machine. As we divide the work between it and other machines, we put them out in about three weeks. It takes about a week to make a heel-shaving machine. Our other machines belong to the bottoming room and stock fitting, sole leather machinery class. We have some machinery for fitting the sole; then we go into the bottoming room.

The turn channeling machine is a large machine weighing about three hundred and some odd pounds, a different type, in design, mechanically, from anything that was ever built. It cuts the channel in the sole of a turn shoe or the insole of a welt shoe. It cuts the channel, forms the edge or the margin. It has a rotary cutter on the edge and a stationary channel knife to cut the channel. We have made it since 1908. We have about sixty or sixty-five installed in shoe factories. Most of them are on royalty—some sold outright. Ninety-five per cent of them are on royalty—very few sold outright. We put them out both ways. The machine does the same work as a machine now put out by the United Company. We turn out about two channeling machines a week.

We have been placing our turn sewing machine or welter on the market about two or three years. The difference between our turn sewing machine and a welter is that in place of the welt

guide I used a small piece, a back gauge, we call it, to fit the shoe and left off the welt guide. That is all the change. For turn work we put on a back gage and for welt work we put on a welt guide. For the welt guide attachment we get about three dollars and fifty cents. When that attachment is on the machine then the machine does the work of an ordinary welting machine. We have about sixty-five of these machines marketed, including thirteen in our own factories. We have about fifty-two machines in other factories. They are used by shoe manufacturers. We can make about two of these machines a day. We have from twelve to fifteen channeling machines in stock. The heel-seat beading machine is a small machine with two shafts. It has a vibrating edge tool to breast the heel of the shoe. We call it a small auxiliary machine. We have been making that machine four or five years. They are sold 337 outright at twenty-five dollars apiece. We have sold several. We have about five or six on hand. We can make three or four a day. The turn molding machine is a small bench machine for molding the edge of the sole of a turned shoe. It is a copy of the Goodyear machine. There are about forty or fifty out; we put one of these out with each stitching machine. We sell them outright. We have been putting them out for about three years. We can make two or three a day. The welt innersole lip turner is a small machine which we have been making for about a year. It turns up the channel flap on a welt inner sole, opening the channel. Four or five of them are on the market. We have two on hand. We can make two or three a day. The United Company has a machine for performing the same kind of work. We sell them, allowing the machines to pay for themselves in royalties. We have only been manufacturing the welt beater a few weeks. It is for hammering the welt out, after the welting machine, to straighten out the welt. We have none on the market yet but have two in stock. We can make one or two a day. The United Company has a machine for accomplishing the same work. The heel-nailing machine is a large machine weighing about 3,000 pounds, which attaches heels. It pricks the heel, drives the nails, and spanks the top lifts in two operations. We have been making it for three years and have twenty-five out on rental.

We have five agents who solicit for orders and who keep the machines in repair, and we advertise somewhat in the papers. I also go out some myself. In my efforts to put these machines on the market I have visited a good many factories; I don't know how many. I couldn't tell; perhaps a hundred of them. It would be impossible to tell the number.

We met with difficulty in placing our machines on the market. Mr. Herrick, a shoe manufacturer in Lynn, took our channel machines and sewing machine, turn sewer and heel-nailing machine and heel breasting machine. They were operating successfully in his factory, but he had a tying clause in his 338 clicking machine lease by which he would have had to pay royalty to the United Company on work done on our sewing machine. We had to take that machine out, although he liked it very much. He kept the heel-nailing machine until he found he would lose his rebate on his Gem insole machine if he kept it longer, as we took that out, too.

(The United States then made an offer of proof as follows:

Mr. FOWLER. With reference to the Pettengill heeler, which is the heeler manufactured by the Haverhill Shoe Machinery Company, I offer to prove that this company offers to install this machine on a fee of three hundred and fifty dollars, with a rental of fifteen dollars per month, or a royalty at ten cents per sixty pair case—the minimum royalty to be one hundred and fifty dollars per year. That is, after the installation fee of three hundred and fifty dollars is paid, it is optional with the shoe manufacturer to pay a fixed rental of fifteen dollars per month, or a royalty of ten cents per sixty pair case, which is about one-sixth of a cent per pair, the minimum royalty to be one hundred and fifty dollars a year.

Now, as an alternative proposition with reference to this machine, they offer to install it for five hundred dollars, this five hundred dollars to be paid fifteen dollars per month. While this fifteen dollars per month installation charge is being paid, the shoe manufacturer is also to pay fifteen dollars per month royalty. He then has the right, if he so elects, to pay fifteen dollars per month additional on the installation charge, and also fifteen dollars per month royalty, until the installation charge amounts to nine hundred dollars, and then the machine is to become his absolutely. That is, it is in effect this: He can pay thirty dollars a month until he pays eighteen hundred dollars, and then the machine is the shoe manufacturer's machine.

With reference to the turn sewing machine, and the channeling machine, they offer to sell this at eight hundred dollars. The first machine, the sewing machine, they offered to sell at eight hundred dollars, and the channeling machine at five hundred dollars, or both together at twelve hundred dollars. These machines they will also lease together, or the sewing machine alone, on a royalty basis, for an installation fee of two hundred and fifty dollars, and a royalty of one-fourth cent per pair net,

a minimum of $100 per year. Without installation fee they charge a royalty of one-third of a cent per pair net, a minimum of one hundred and eighty dollars per year, with return charge sufficient to pay the expense of placing the machines in condition, and rental not exceeding one hundred and fifty dollars, if machines are in good working order.

339 As an alternative, they offer to accept an installation charge of two hundred and fifty dollars, and the purchase price will be paid in installments of one-half of a cent a pair, and royalty of one-fourth of a cent per pair. That is, they will accept one-half a cent per pair with a royalty of one-fourth cent until the income from the one-half cent a pair will pay for the machine, and when that is done the machine is to become the property of the shoe manufacturer. They offer to sell the Pettengill machine outright for nine hundred dollars. That is one of the offers for the heeler.

PUTNAM, J. You will file that paper, please. We are unable to see the bearing of this proof; but as part of the Government's case we may see it by and by. We have been pretty liberal, and we will allow you to prove actual transactions showing either sales or leases and the terms, either one or the other, but nothing beyond that, no attempt at comparison, but the mere fact that such-and-such sales have been made and the prices, or that such-and-such leases have been made and the terms of the leases.

PUTNAM, J. We have got to let you put in your case. We don't at present see the bearing of this evidence; but we probably may before we get through. At any rate, we will give you an opportunity of making out your case. That is fair, isn't it?

Mr. FOWLER. Perfectly fair, your Honor. I am well satisfied with that.

Direct examination resumed:

The WITNESS. I produce a list of shoe manufacturers with whom we have installed machines. I have indicated those who are using our stitching machines. They are also using our channeling machines. Some also use our nailing machines. It also shows which of our customers also use machines leased from the United Company. Witherell & Dobbins have a machine on the $900 proposition. Chesley & Rugg have one. They have that privilege of continuing at $30 a month.

C. E. Aborn, of Lynn, and Ira W. Webster bought our heel-nailing machine outright for nine hundred dollars cash. The others took machines on a basis of paying thirty dollars per month, of which fifteen dollars goes toward paying for the machine and fifteen dollars is royalty. When the fifteen

dollars per month amounts to nine hundred dollars, the customer owns the machine. I am speaking now of the nailer. Twenty or twenty-five persons have installed our heel-nailing machine.

George A. Learned, of Newburyport, bought our stitching machine outright. There are very few bought outright.

339a About 1905 or 1906 I invented a heel-nailing machine for attaching heels to shoes, which I sold to the United Company. I have at home a copy of the contract which I made with the United Company, which I will produce. I think the date of that contract was about 1907.

Q. Since that time have you attempted to make any further improvements on heeling machines?

A. No, sir.

Q. Why?

Mr. CHOATE. Wait a moment.

Mr. FOWLER. I will withdraw it if you object. No; I believe I will ask it.

Q. Why?

Mr. CHOATE. I object.

Mr. FOWLER. I want to show that it was in consequence of a provision in the contract that Mr. Webster made with the United Shoe Machinery Company.

Mr. CHOATE. In the first place, I understand the court in its ruling on the particulars limited the United States to those acquisitions which were named in the bill. That is the theory upon which we have been trying the case.

Mr. FOWLER. I did not so understand. That particular question has never been presented to the court, and we have never undertaken to argue to the court why we should not be limited.

PUTNAM, J. In ruling upon the motion for the bill of particulars we said that as to further matters no further particulars were required.

Mr. FOWLER. Independent of the bill of particulars, this bill alleges monopoly. Suppose it should be necessary that we present a number of other contracts that are not particularly mentioned in the bill. The bill alleges a monopoly as plainly and specifically as a bill can allege anything. In addition to that it specifies these several contracts that were entered into. Then it says that there were a number of other contracts, and that having acquired all those properties mentioned in these contracts the defendant established a monopoly.

PUTNAM, J. What contract are you asking to prove here?

Mr. FOWLER. Mr. Webster has already testified that he entered into a contract for an invention. There was no effort to particularize as to those in the bill.

PUTNAM, J. What kind of an invention?

Mr. FOWLER. On a heeling machine. And he conveyed the patent on the heeling machine to the Shoe Machinery Company.

PUTNAM, J. Not a business?

Mr. FOWLER. Not a business, no. And, as we understand, the contract will show that along with it he obligated himself to convey to the Shoe Machinery Company all additional inventions. And I was simply asking the question why he didn't do any further work in attempting to invent heeling machines in order to show that this contract is void as against public policy. That was the purpose of it. If your honors think it is objectionable, I will state what I expect to prove and reserve my exception and go on.

PUTNAM, J. This is not in the bill of particulars. It is nothing that the bill sets up, nor is it in the bill of particulars filed by you.

339b Mr. FOWLER. Of course, your honor, it is absolutely impossible for us to hunt all over the country and find every single individual case——

PUTNAM, J. You can't expect the defendants are going to hunt all over the country——

Mr. FOWLER. The defendants have in their office every single contract of this character.

DODGE, J. I don't understand that the contract is objected to here. He didn't have the contract with him and you asked him to bring it, and he is going to bring it. I don't understand that that is objected to.

Mr. FOWLER. The only thing objected to here was the response of the witness to the question "Why?"—that is the question I really asked when the objection was made.

PUTNAM, J. The question was what?

Mr. FOWLER. Why he did not do any work toward attempting to invent a heeling machine.

BROWN, J. Is there a general allegation somewhere in the bill that they took from various inventors covenants not to invent?

Mr. FOWLER. I think there is, your honor.

BROWN, J. There are specific allegations. I had in mind that there was a general allegation.

Mr. FISH. Did your honor say covenants not to invent?

BROWN, J. Yes.

Mr. FISH. I haven't heard of any such allegation.

Mr. CHOATE. The only allegation is on page 27.

BROWN, J. That is what I meant, Mr. Fish.

Mr. FOWLER. Now, on page 28 it says:

"Among the individuals, partnerships, and corporations who were competitors of defendants, and whose businesses have been so acquired and absorbed by them are the following:"

Then follows this long list here.

BROWN, J. You have some eighty instances—or fifty?

Mr. FOWLER. Sixty or seventy—along there somewhere.

BROWN, J. Isn't that enough?

Mr. FOWLER. It doesn't seem to satisfy the gentleman.

BROWN, J. Ought you to go into other instances after you have named sixty?

Mr. FOWLER. If your honor thinks it is enough——

BROWN, J. Is it a new case? Is it anything different from the numberless cases?

Mr. FOWLER. No, your honor. I was just attempting to prove by him the thing that we are going to insist is a fact as to all of them, that it stopped his inventive genius along this line by getting him to enter into this contract.

Mr. CHOATE. Perhaps he didn't have any. Your explanations of things that never happened are, I should think, a little bit remote.

Mr. FOWLER. You don't deny that such a contract was entered into?

Mr. CHOATE. I don't know a thing about it. I never heard of it before, at any rate.

Mr. FOWLER. I believe, your honors, I will withdraw the question rather than to waste time.

340 JUNE 11, 1913.

The WITNESS. I produce a copy of a contract made by me with the United Shoe Machinery Company, whereby I transferred certain patents to that company.

(This copy was offered by the United States and was marked "A," for identification.)

Mr. CHOATE. We object to it as not included within the bill.

BROWN, J. I understand this is of the same class as various transactions which are set up in the bill.

Mr. FOWLER. Yes; there are some set up in the bill.

BROWN, J. But this is not set up in the bill, nor in the bill of particulars.

Mr. FOWLER. No; it is not in the bill of particulars.

BROWN, J. And the objection is on the ground that there is no basis for it.

(It was excluded.)

The WITNESS. We could not fill an order for a full set of lasting machines for a factory with a capacity of six thousand pairs per day without going abroad. I couldn't rely on that order. We could furnish a full set of welters for a factory of that capacity in about two months. We do not build rapid outsole stitchers, but have the agency for them. We couldn't rely on any date of shipment for those stitchers. We could furnish a factory of that capacity heeling machines in about three months. With reference to metallic fastening machines, we don't build either the loose nailer or the slugger, but are agents.

Cross-examination:

We have been in business since 1907. We began by putting out the turn channeling machine. We now furnish a complete line of machines for making turn shoes and advertise that we do so.

(Advertisement headed "Complete line for turns," was identified by the witness and is marked "Defendant's Exhibit 75.")

We say in that advertisement, "We have complete line of bottoming machinery for turn shoes which we can install at short notice." That is correct. "Short notice" is a matter of opinion. We regard two months is short notice for supplying any machinery. I should say it would be so generally regarded by the trade. I would allow seven or eight heeling machines to equip a factory of 6,000 pairs. Three months would be fairly short notice for that number of machines.

341 In equipping six factories of a thousand pairs each I should put one machine in each factory. A large percentage of shoe factories run a thousand pair per day and under. There are probably not in the United States a dozen factories with an output of 6,000 pairs a day. Our practice has been to keep one or two machines of each type on hand for immediate shipment, and when we get an order exhausting this number we make them to order.

I understand Curtis & Jones, Reading, Pennsylvania, make more than six thousand pairs of children's turn shoes per day. We have had business dealings with them. I know of no other factory whose daily output is as much as six thousand pairs.

Our full line of turn machines consists of turn channeling machine, molding machine, turn sewing machine, heel-nailing machine, heel-shaving machine, heel-breasting machine, and heel-beading machine. The heel-nailing, heel-shaving, and heel-breasting machines may be used also on McKay or welt shoes. Those are not all the heeling machines that are required to make a turn shoe. We handle the Hamel machine for slugging heels and one turn machine. The Hamel machine is built

in Haverhill, and we solicit orders for it. We offer welt inner sole lip turners, welt beaters, welt groovers, and beveler. We handle but do not build the Webster leveler.

The memorandum I used in direct examination showing where our machines are placed shows that we have machines with fifty-eight manufacturers, of whom thirty-eight also use United machines.

In one factory our turn sewing and heel-nailing machines are used and also the like machines of the United Company; in another, our sewing machines and the United Company's slugger and loose nailer are used together; in another, our sewing machines and channeling machines and the United Company's sewing machines and auxiliary machines and nailing machine; in another, our sewing machines, the United's McKay machinery and heeling machines; in another, our sewing machines with the United's nailing machines—heel-nailing machines; in another, our sewing machines and the United's sewing machines; in another, our nailing machines and the United's sewing machines, on the same product; in another, our nailing machines used with the United's turn and welt machinery; in another, our breasting machine used with the United's McKay machinery; in another, our breasting machine with the United's McKay and welt machinery and turns; in another, our sewing machines and nailing machines with the United's auxiliary machines; in another, our sewing machines with the United's nailing machines; in another, our channeling machines with the United turn and welt machinery; in another, our turn sewing machines and nailing machines and breasting machines and channeling machines with the United's McKay system except the heeling; in another, our breasting machines with the United's turn machinery.

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Our machinery is being used side by side with the United machinery in thirty-eight factories, producing the same product. Sometimes a manufacturer will use our turn sewing machine and the United Company's heeling apparatus and sometimes he will use our heeling apparatus and the United Company's turn sewing machines, or will mix them up on some other plan.

Q. And those thirty-eight instances show a very great variety of choice in the manufacturer in the selection of his machines for those processes as between your two companies?

A. Give me that question again, please.

Q. I say those thirty-eight cases show a great variety of choice on the part of the manufacturers in their selection of their machines from your two companies?

A. Yes, sir.

My impression is that the occurrence at Mr. Herrick's in Lynn, regarding which I testified yesterday, was since December, 1911.

At the time Mr. Herrick took machines, he was making turns and welt shoes and was using machinery obtained from the United Company, including the clicking machine. I solicited him to obtain from us one turn channeler, a turn sewer, heel-nailing machine, breasting machine, molding machine—that is, the set for making turn shoes, also for nailing his welts. He was already equipped with those. We could offer no
343 clicking machine. He said that he liked the workings of the machine but that he would have to discontinue using them on account of the rebate on the Gem innersole that he would lose if he continued using our machines; also his rebate on the fifteen per cent of stock that he would receive—the stock in the United Company which he would receive for not violating his leases, same as I understand all manufacturers received. Our nailing machine had been in his factory about a year and the sewing machine and channeler about three or four weeks. He had paid $350 on the nailing machine; accepted a lease on that. He had signed no lease and made no payment on the sewing machine and channeler—just in on trial. He said he wanted to use the clicking machine and I suppose he said he found it of advantage to use in making the shoe. His reasons for not keeping our machines were his leases and the money he would lose.

A six thousand pair factory for making welt shoes would require six or eight innersole lip turners. We could furnish those in two days. We could furnish the necessary welt-beating machines, eight or ten in number, in about a week. In a factory of that size making turn shoes we could put in molding machines in a day or two.

There are very few factories making six thousand pairs of welt shoes a day. I don't think there are 6,000 pairs a day made under one roof, in one factory, in the country, that I know of, to my knowledge.

Direct examination resumed:

The Hamel Shoe Machinery Company, of Haverhill, used to be the Duplessis Company.

Cross-examination resumed:

Our company handles the lasting machines of Gimson & Company of England, and the Standard Rotary Com-
344 pany of England. We have not a supply of those lasters here at the present time. We intend to have one or more of them here, as a usual thing. If we want to supply one to a customer we intend to cable for it. It takes about twenty

to twenty-five days to get them from England. I am in hopes to improve on that. We are also agents for the slugging machines of the Gimson and Standard Rotary Companies. We undertake to fill the requirements of a manufacturer whatever they are. We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us.

345 JUNE 11, 1913.

GEORGE W. MALOY, witness for the United States.

My name is George W. Maloy. I live at Jamaica Plain, Boston, Mass. I am in charge of the sales department of the Boylston Manufacturing Company and have been for five or six years. I have been in the shoe machinery business for about thirty years as foreman in a machine shop, superintendent and assistant manager, in charge of sales. I have been with the Flagg Manufacturing Company, Globe Buffer Company, and Boylston Manufacturing Company, which absorbed the Flagg Company when it went into bankruptcy about six or seven years ago. I understand that various shoe manufacturers have been buying stock in the Boylston Company.

The Boylston Company makes treeing machines and edge setters, scourers, buffers, rounders, heel finishers, heel blackers. That is all we offer. All of them are finishing-room machines. None are used for bottoming shoes. We have never made any effort to market any bottoming machines. We are experimenting with such machines and have been since we organized—six or seven years. We have placed bottoming machines in the factories on trial but never tried to sell or lease any. We placed them in our own factory at Fair Haven and in a factory at Pepperill run by the Buffalo Shoe Company. I am familiar with the parties making shoe machinery in the United States. I know of no companies marketing lasting machines but the United. Welting machines are put out by the Hamel Shoe Machinery Company, of Haverhill, the Haverhill Shoe Machinery Company, R. H. Long Company, of South Framingham, Champion Shoe Machinery Company, of St. Louis, and Victor Shoe Machinery Company, of Boston. I believe the two last confine their business to repairers and do not furnish machines to shoe makers. Outsole stitchers are made by R. H. Long
346 & Company and Union Lockstitch Company of East Boston. The latter is the company Mr. Merrick is connected with. No other company that I know of but the United

puts out a McKay stitcher. The Haverhill Shoe Machinery Company puts out the Pettingill heeler. No other company except the United markets one that I know of. Long has a loose nailer; it is the only metallic fastening machine I know of outside of the United machines.

Cross-examination:

The Boylston Manufacturing Company for a number of years was controlled by H. H. Rogers, who had an empty factory at Fair Haven which was available for our experiments. The machines which were manufactured or developed by the Boylston Company were taken down to that factory and tried out there. The present owners acquired Rogers' interest from his estate. I understand the Boylston Company's capital is $400,000. I am not interested in it financially. Its plant is in Boston. It acquired the inventions and interests of Mr. Copeland, who is at present general manager and president. We make power treeing machines, hand treeing stand, Julian rounder, Union edge setter, Webster buffer, Webster cleaner, Globe heel scourer, heel-finishing machine of hot wax type, and heel-blacking machine. That is all. The heel-blacking machine and the heel-finishing machine have been put out recently. They are adapted to all kinds of shoes. They are sold outright, except the power treers which are put out on royalty. Many are sold to customers of the United Company all over the country, I suppose. I know of nothing which prevents our disposing of those machines to manufacturers who use United machines. We are constantly doing so and have been ever since starting business. I do not know of any persons making bottoming machinery other than those I have named. I do not know whether there are any others.

347 Direct examination resumed:

The machines made by the Boylston Mfg. Company are of the type of those put out by the general department of the United Shoe Machinery Company, which they sell outright.

Cross-examination resumed:

The catalogue which you present me is a catalogue of machinery offered by the Boylston Mfg. Co. (This catalogue is marked "Defendants' Exhibit 76.") We are offering all of the machinery named in this catalogue.

Direct examination resumed:

The catalogue has been got out within six months. It mentions all the machines the company makes. We make none that I did not mention in my examination in chief.

348 JUNE 11, 1913.

LORENZE WUTHER, witness for the United States.

My name is Lorenze Muther. I live in Newton. I work with the Peerless Machinery Company which manufactures shoe machinery, principally what is called stitching-room machinery; i. e., eyelet-setting machines, skiving machines, hook-setting machines, perforating machines, sanding machines, pasting machines, cementing machines, folding machines, button-sewing machines, and a tip press belonging to the finishing-room department of the factory. We have both tip press and tip perforating machines. Similar machines are put out and sold outright by the general department of the United Company. We make no stitching machines of any kind. We sell our eyeletting machines outright or loan them without charge to people who buy eyelets from us. The companies that I remember that make eyelets are—the Atlas Tack, Hughes Eyelet Company, Rimmon Eyelet Company, Ansonia, Waterbury Brass Company. I don't know them all.

I do not know of any concern making japanned eyelets except the Atlas Tack Company. The United Shoe Machinery Company makes nearly all the other eyelets under different names. There are others making eyelets, e. g., the Waterbury Brass Company, but they all make eyelets that are not japanned.

Our machines relate to work on uppers of shoes, except the sanding machine which finishes or roughs the sole before it is put on the shoe.

Cross-examination:

We publish a catalogue. Stitching machines are used in the stitching room to sew uppers together. But we do not manufacture any of them. The McKay and the welt stitcher are different machines and are not used in that room. We sell all the machines which we produce except a hook-setting machine, which is marketed for us exclusively by another party.

349 Our eye machine is the Peerless rapid eyelet machine. It will insert any kind of eyelets in shoes. They are put out on loan leases and we ask customers to buy all their eyelets from us—but they don't.

Q. I say they will cheat you if they can?

A. Oh, yes.

Q. Unless you do tie them up tight?

A. I don't know as you would call it cheating. I won't call it that.

We supply six or eight different kinds of eyelets, mostly japanned, which we buy and resell. We buy our japanned eyelets from the United Company and the Atlas Tack Company. We

have difficulty in getting the celluloid eyelets. All other kinds we can get. The Atlas Company make various kinds of eyelets for shoes, including japanned eyelets. We can buy and sell all we want—all our customers require. We try to push the Atlas Tack eyelets, as we make more money on them. We sell more Atlas than United eyelets, and our customers are altogether shoe manufacturers. We make, but don't handle, a hook-setter. We handle an imitation enamel eyelet with our own machines, in large quantities, and only to shoe manufacturers. Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. That company has machines for performing similar operations. Our machines and theirs are sometimes used side by side in the same factory. Manufacturers use either they want—or both. Our cementing machine cements the edge of the upper before it is turned over ready for stitching. I am not sure that the United has a cementing machine that does exactly that same thing.

Direct examination resumed:

We can't get celluloid eyelets. The United Company manufactures them. I don't remember whether I have attempted to get them from the United Company. I wouldn't attempt, because I think it would be useless to try, except at retail price—so that we couldn't sell at any profit. No one else that I know of in this country manufactures them except the United Company.

Cross-examination resumed:

These eyelets are what is called fast-color eyelets.

350 JUNE 11, 1913.

CHARLES S. JOHNSON. witness for the United States.

My name is Charles S. Johnson. I live in Lynn, Mass. I am now connected with the Boylston Manufacturing Company. From 1890 or 1891 to 1905 I was connected with the Tripp Giant Leveler Company which made several types of levelers for leveling the bottoms of shoes of all kinds.

In 1902 or the spring of 1903 I had a conference with Mr. Winslow, Mr. Wilson, and Mr. Bresnahan who was then part owner of the Tripp Company, and interested in his own concern, the Bresnahan Shoe Machinery Company, with reference to selling out to the United Company. At the first interview we came to a verbal agreement as to the acquisition of the business by the United Company and at a later interview between the same parties a contract was presented which we declined as not being the same proposition to which we had verbally agreed. Bresnahan and the Tripp Company had been having litigation

for nine years, till 1899 or 1900. As I was leaving Mr. Winslow suggested I had better sign it as he would have our business anyway, or words to that effect. I wouldn't say those were the absolute words, but that was the gist of the remark he made to me. We were selling our machines outright to shoe manufacturers in the United States and abroad. We had several machines; direct pressure leveler; rolling pressure leveler, called Giant leveler; and an improvement on it, the new Giant leveler. Our new Giant leveler sold for $350. Shortly after our conference with Mr. Winslow his company put a new leveler on the market which was substantially the same as ours. The Tripp Giant Leveler Company has been out of business since 1905.

Cross-examination:

I have been with the Boylston Company since 1905 as secretary and treasurer until the shoe manufacturers became interested in it and after that in the patent department. The
351 Tripp Giant Leveler Company did business in Lynn. It was one of the constituent companies in the Boylston Company. I went with it. They were putting out Tripp Giant levelers when they went into the Boylston Company.

A previous effort had been made on the part of those in control of the Tripp Company to have the United Company buy it before the litigation with Bresnahan was finished. I was not at that time in control of the Tripp Company. That came to nothing. When I came into control of it I talked with Mr. Winslow for the purpose of selling it, as I have testified. But I never sold it to him or his company. Mr. Bresnahan was present at this meeting when I said some verbal understanding was arrived at. At the second meeting a paper had been prepared which I thought did not embody all the terms of our oral agreement. Our meeting was friendly. Mr. Winslow's conduct was courteous but businesslike at our meeting. That was substantially eleven years ago.

As to who has been around to see me recently to get my recollection of that conversation, why, I think I have discussed it with Mr. Copeland of the Boylston Company. Mr. Kelleher representing the United States came to see me to ask me about my talk with Mr. Winslow, about six or eight months ago.

Q. He told you he was trying to find all the people who had any complaint against the United Company?

A. I can't give his language; I understand that was his occupation.

Q. That was his job?

A. Yes, sir; that is it.

Q. He was employed by the United States to go around to see whom he could find who had complaint to make against the United Shoe Machinery Company?

A. He didn't use that language.

352 Q. That is the substance of it?

A. Substantially; yes.

Q. He came to you?

A. Yes, sir.

Q. And he wanted to know if you had any kick?

A. I don't think that was his language either.

Q. That was the substance of it, wasn't it?

A. Substantially.

Q. Did you say you had a kick?

A. I didn't use that language. I related this circumstance to him.

Q. You had a grievance?

A. I related this circumstance.

Q. Did you say you had a grievance?

A. I don't think I used that language.

Q. Something to that effect?

A. Something substantially that.

If it is having a grievance against the United Company to feel that my rights have been imposed on for years by that company, I have a grievance. I made no memorandum of Mr. Winslow's words but have discussed them lots of times. As I was leaving Mr. Winslow tapped me on the shoulder and said "Johnson, you had better sign our offer because we are going to have your business anyway." I replied, "Mr. Winslow, I think you are right. I think it is rather a brutal way of putting it, but I think you are right without question." I can't remember whether those were the exact words or not. The idea I conveyed was that I thought he would have our business some time. I think nothing else was said. I have written lots of articles hostile to the methods of the United Company which were published in the Weekly Bulletin, a trade paper, and they have been published in booklet form.

353 JUNE 11, 1913.

GEORGE H. CLARK, witness for the United States.

My name is George H. Clark. I reside at 36 Sturgis Street, Winthrop. I have invented treeing machines, stitching machines, and attachments for other shoe machinery, also a cork-cutting machine; and a method for molding or lasting shoes, by which the upper is fitted on the last, drawn over the last, forced into the mold, and the edges turned outward, and then the inner sole is cemented thereto. Then it passes into—what I use is a

Puritan machine for convenience. I have invented an attachment which goes on a Puritan machine which enables me to stitch a shoe around and trim it at the same time. The machine has been placed in a factory at Pepperell, Mass., and is now in operation in Lynn. I am experimenting with another idea. About three years ago or so I had a machine in the Richardson factory in Reading. About that time I had a conversation with Mr. Edward P. Hurd with reference to getting a Goodyear rapid lock-stitch machine put into the Richardson plant, either on lease or sale. I said, "Mr. Hurd, will you put a lock-stitch machine into Mr. Richardson's factory at Reading?" He thought it over, and laughed and said, "You mean well, but it is against our policy to put a machine in whereby it is going to interfere with our welt system, and we have to put the knife and protect our interests. Now, I will tell you. I won't put any one of our rapid-stitching machines into any factory where you are to experiment with."

Cross-examination:

354 The machine which we had at the Richardson factory was the molding or lasting machine and the Puritan machine. It was the molding machine that I spoke of. Our machine had been in Richardson's shoe factory for experimental purposes about four months when I had my talk with Mr. Hurd.

Q. Then you went to Mr. Hurd and asked him if he would send a stitching machine out there, did you?

A. Yes, sir.

Q. To use with your experimental molding machine?

A. Yes.

Q. Was that your own suggestion?

A. I was asked to see Mr. Hurd by Mr. Richardson, to see if he would sell him or lease him a rapid-stitching machine or a lock stitcher.

Q. And Mr. Hurd told you that he wouldn't put one of their rapid-stitching machines in a factory where you had an experimental machine for you to experiment with?

A. Yes, sir; he did.

Q. For you to experiment with?

A. He did.

Q. Is that substantially all that he said to you?

A. No.

Q. Not substantially all?

A. No, sir.

Q. What else did he say to you?

A. He said: "Clark, I will tell you what we must do; we have got to protect our own interests. We must protect ourselves on this method that you have of this flexible welt shoe

of yours which jeopardizes our welt system." He says: "I don't think it is wise for us to help you out and put a machine in where you are to experiment with." I said: "Very well."

Q. And you understood him to be speaking of this molding machine you were experimenting with?

A. He understood it thoroughly.

Q. That is the machine he was speaking of?

A. That is the machine.

We have made several of the molding machines. One is in operation at the Molded Shoe Company in Pepperell, Mass., and we have a triple machine, a new one, at the factory of Sullivan & Wardwell, in Lynn, where I am experimenting now. We have passed the experimental stage now, I hope and am quite sure, and are getting ready to make some shoes and market them. Up to the present time it has been purely experimental.

355 JUNE 11, 1913.

IRVING A. HADLEY, witness for the United States.

My full name is Irving A. Hadley. I am an attorney at law and reside in Lynn, Mass. I was in the needle business in Lynn from 1898 to 1904, first in the employ of Benjamin R. Jones, then in partnership with Mr. Kimball, under the name of Kimball & Hadley, and then as officer of the Kimball, Hadley Company. We manufactured machine needles, known as the Goodyear rapid lockstitch needle, Universal slugging awl, loose nail awl, and some special needles. The United Shoe Machinery Company were putting out needles and awls for similar work. I had difficulty in selling our needles and awls to shoe manufacturers. Beginning about January, 1904, I could sell no awls and few needles to the factories of E. E. Taylor, G. D. Barry & Co., Churchill & Alden, Rice & Hutchins, at Rockland and South Braintree. They stated orally that the using of our needles and awls was in violation of the terms or conditions of the lease and if the manufacturers continued to use our awls and needles the United Company would take their machines out of the factories.

Later I talked with Mr. Charles Bailey, manager of the United needle and skiving department, relative to the purchase of our plant. All negotiations for the sale were made through Mr. Bailey. The negotiations occurred about January of 1904. I saw him twice at his office in Boston and then twice in Lynn. We submitted a proposition to him in Lynn and the contract was signed in the office of an attorney of the United Company in the Boston office of the United Company. Mr. Donham was the attorney. Mr. Donham and Mr. Bailey were present. Mr. Bailey passed me some checks, Mr. Donham did not dictate the contract while I was there.

In the first conversation with Mr. Bailey I said I had come to see him at the instance of Mr. Charles Martin, an assistant of Mr. Bailey's. I asked what needle manufacturers they had bought out, and he said the Lily Company, the New England Awl & Needle Co., and the Marlboro Awl & Needle Co.
356 He said they had in no case paid a bonus above the actual value of the plant, and they had not bought any of those firms until the firms had first come to them and requested them to do so. I told Mr. Bailey we were not interested in a proposition to sell out at that time. He asked me the prices of our awls and needles, and when I gave them he said we could not make any money at those prices. Either at that or the next interview when I said—and I did say to him: "We can manufacture needles and sell them as cheap as the United Shoe Machinery Company," Mr. Bailey said: "Oh, no, you can't; we can give them away if necessary." He said: "You know Mr. Winslow is a man that once having made up his mind to get something he will get it." He told me that some time prior to my being in there a number of manufacturers manufacturing McKay needles had started lowering the price—that the United Company had then sold McKay needles for less than they could be made for, and by doing that they had, to use his almost exact words, got a McKay combination. And he says: "We hold that to-day." I told him that neither Mr. Kimball nor myself desired to sell. And in reply to that Mr. Bailey said: "You boys must realize that the time to sell a horse is when you don't want to sell." I think it was at that interview that I told him that Mr. Kimball and I had not talked prices at all, but at the very most I would not consider less than $5,000, if we considered anything. He then told me that he wanted to meet Mr. Kimball and that he would come to Lynn to the factory and see him. He also told me regarding some patent litigation that they had; as I now recall it, they wanted to make some arrangement regarding the purchase of this patent, but they could not bring that about, and in consequence of patent litigation the other fellow lost all he had.

(Objected to by defendants on the ground that there was no mention of this evidence in the bill of particulars. Defendant's objection saved.)

Mr. CHOATE. Mr. Bailey is in a sanitarium and can't appear here as a witness.

PUTNAM, J. All we can do is to hold the witness so that you can have an opportunity to prepare to cross-examine him. We don't want to embarrass you or anything of that sort, of course. We will hold the witness to such time as you desire in order to give you an opportunity to cross-examine.

Mr. CHOATE. Well, I should like until Friday to cross-examine him, if I may have it.

PUTNAM, J. That is all right. You may have longer if you desire. We will give you full opportunity. We will hold him for Friday. If you want any more time we will give it to you. We don't want you surprised.

357 The WITNESS. We were selling awls and needles throughout Brockton and what is termed the South Shore territory, which includes South Weymouth, Rockland, East Weymouth, some in Bridgewater, and a very few in Rochester, N. Y., and Haverhill, Mass. Two orders went to a concern in England amounting to about $200. After we sold out to the United, I entered their employ.

(The United States then offered to prove that Mr. Bailey instructed the witness to get certain information regarding the competitors of the United Company. The evidence was excluded.)

Cross-examination:

We made needles for the Goodyear stitcher, no awls for it.

Q. Now, do you know whether the United Company before it obtained your needles manufactured any needles for its Goodyear machines?

A. It did not to my knowledge.

Q. Did it buy Goodyear needles of you?

A. Never.

Q. Did you supply Goodyear needles for its machines?

A. Not to the United Shoe Machinery Company.

Q. You don't know, do you, where it did obtain its Goodyear needles before it bought yours?

A. I know from what Mr. Bailey told me.

Q. I mean as any matter of trade knowledge, had you any information about it?

A. They obtained their Goodyear needles from the Smith Company in New Haven, Connecticut, and from the Excelsior Needle Company, of Torrington, Connecticut.

Q. But so far as you know they didn't make any of their own?

A. No.

Q. And you sold out in about 1904?

A. Yes, sir.

Q. Now, do you say that at this interview when you were discussing the sale of your needles to Mr. Bailey you said: "We manufacture needles and sell them as cheap as the United Shoe Machinery Company"?

A. I made such a statement.

Q. And Bailey said: "Oh, no; you can't"?
A. Yes.
Q. Although you knew they were not manufacturing any?
A. I don't think I quite understand what you mean.
Q. You just told me they didn't manufacture any Goodyear needles.
A. They didn't.
Q. And yet you say this conversation took place—that you said you could manufacture needles as cheap as the United Company, and Mr. Bailey said: "Oh, no; you can't"?
A. Yes; Mr. Kimball was in the needle business before I joined him in 1898. I had been bookkeeper and then manager for Mr. Jones, a needle manufacturer. The price I gave Mr. Bailey was $5,000. I accepted $4,750. We sold out in 1904. The United Company afterwards brought suit in equity for violating the terms of our agreement and entering into business again, which we had agreed not to do for a number of years, but had done in breach of our agreement. The Supreme Court of Massachusetts found that we had violated our agreement and granted an injunction against us. As to whether I have felt a little sore about that, I felt it was a wrong decision. I began studying law about 1900, with the idea of practicing. I was admitted to the bar in 1908.

357½ UNITED STATES OF AMERICA,
District of Massachusetts, ss:
This volume is one of the volumes of testimony and exhibits referred to in the order of the court, entered June 19, 1916.
Attest:
WILLIAM NELSON, *Clerk.*

358 JUNE 11, 1913.
IDA B. V. W. CONVERSE, witness for the United States.
My name is Ida Burnside Van Waggenen Converse. I live in Auburndale. I am a daughter of Albert Van Waggenen. He is dead. He became treasurer of the Goddu Sons Metal Fastening Company when it was organized on August 1, 1897, and owned seven thousand three hundred and twenty-five shares of stock in the company, of which part has reverted to me. The United Company bought stock of the Goddu Sons Company about February 25, 1899. On Saturday, February 3, 1900, I talked with Mr. Winslow about that stock purchase.
Q. Now, please state the substance of the conversation that you had with Mr. Winslow about the Goddu machines.

A. We had discussed a long while. I said to Mr. Winslow: "If you say what is true, that they had no business and no machines and no money in the treasury, and no money—they couldn't raise money to go on with the business, and no manufacturers to take them—they couldn't put them on the market, then," I said, "Mr. Winslow, why did you buy them out—because they would have gone to the wall—they would have had to if you say what is true—they could never have competed with you, a rich, powerful trust; why didn't you leave them alone and let them die a natural death, which they would have done? Why did you buy them out?" And he said: "Miss Van Waggenen, I bought them out to get rid of them, to have no more trouble or competition with them."

Cross-examination:

By "them" he and I meant the Goddus, or the majority control of the company. I am not related to the Goddus in any way. I had never met any of them. I knew of the troubles that had existed between the Goddus, father and sons, and the McKay Shoe Machinery Company—they were more than troubles, and I knew about the lawsuit brought by Mr. Brooks and Mr. Stanley, as trustees of the McKay Metallic Fastening Association, against the Goddus and my father, and that they claimed that they had been unfairly treated by the Goddus. That suit had gone on for about a year. My father took Mr. Goddu's part in the controversy. When the Goddus sold out they left my father and others in. In my talk with Mr. Winslow there was very little said about the troubles between the
359 Goddus and the McKay Association. I knew something about it, and I know he must have known all about it. I made memoranda of my conversation with Mr. Winslow while he was out of the room, which I afterwards destroyed. I have substantial copies of it, but no exact ones made from it. I have made three or four at different times. I have been suing the United Company for more than ten years in every court I could find in the State.

Q. And so far no court has given you any decision, has it?

A. They have given me different decisions on hearings on technical points. The suits are still pending. I am sure Mr. Winslow used the word "competition" and spoke of getting rid of them, and having no more trouble with them. He said to me that they hadn't anything, they weren't doing any business, they weren't a factor at all.

Q. And then you repeated what he said, by way of argument, and you said: "Then why do you want to ~~ret~~ rid of them?"

A. Yes.

Q. And buy them out?
A. Yes.
Q. And he said: "To get rid of them and have no more trouble with them?"
A. Yes.
Q. Are you quite sure that in that connection he said anything about competition?
A. Yes; I know it.
Q. Your memorandum will show it if he did say that?
A. Yes.
Q. And you will bring that in to-morrow?
A. Yes.

I produce a copy of a memorandum made about 1900 or 1901, I think, of my conversation with Mr. Winslow. I have made no memorandum since, except to copy this 2 or 3 times to give to different parties. It reads, referring to Mr. Winslow's statement: "He then made a most significant reply, 'I bought them out to get rid of them, to have no more trouble or competition with them.'" I have seen Mr. Goddu twice since my father's death. My father was not treasurer of the Goddu Company at the time of his death. When the United Company acquired it, they immediately put in their own officers.

360 JUNE 11, 1913.

GEORGE A. LEARNED, witness for the United States.

My name is George A. Learned. I reside in Newburyport, Mass. I have been a shoe manufacturer and have been in business for myself for seven years. About June, 1911, I had a Haverhill turn sole stitching machine installed by the Haverhill Shoe Machinery Company which fastened the uppers to the soles. I had been using machines leased from the United Company for the same purpose. Matthew Gray, representing the United Shoe Machinery Company, came to me about installing additional welt machinery. He did not install them. He said the United Company would install a line of Goodyear welt machinery for me at an initial charge of three thousand dollars, and no rebate on the Gem insole machine, but if I wanted their welt machinery on the same bais as other manufacturers, who didn't use competing machinery, I would have to discontinue the use of the Haverhill sewing machine. We could not accept that proposition. I saw Mr. Winslow with reference to the matter in August, 1911, at his office. I had taken the matter up with him as to why we could not get the machines on the same basis as our competitors, and he said there was no reason if we lived up to our

Goodyear leases. I asked him how we were violating them, and he said we were not living up to clause 6 which provided we should pay three-quarters of a cent per pair royalty on every pair of shoes stitched, whether on the United or Haverhill machines. I told him I did not see why we should pay royalty for shoes stitched on a competing machine. He said that was the terms of the lease, and we were not men of honor or we would pay, and that they intended to collect the royalty with six per cent interest for the time it hung due. I can't recall all that happened, but that was the substance of it. He said
361 we would either pay or he would drive us out of business. I asked him how, and he said, "Mr. Plant is out of business." I said, "Well, we haven't borrowed any money, Mr. Winslow," and he said, "The least we will do will be to take out all the United Shoe Machinery Company machines you have in your plant." I replied, "That is a privilege you have, sir."

Cross-examination:

I was manufacturing turn shoes altogether before my conversation with the man from the United Company. We had been for some years using the United Company's turn sewing machine and auxiliaries. The Haverhill stitcher was put in on trial about the spring of 1911, about two months before I talked with Mr. Gray. We had one set of turn machines from the United Company, perhaps two stitchers, on a noninitial premium lease. We also had a Planet sole rounder. We had a Haverhill channeling machine to use with the Haverhill stitcher. We paid one hundred and twenty-five dollars for the Planet sole rounder and a yearly rental for the Goodyear channeling machines. The hand-power machines were a dollar a year and the power machines fifteen dollars a year. There was also a breaking-down machine, on rental of a dollar a year. As to whether my lease provided that those auxiliary machines should be used only on shoes that were stitched on the Goodyear turn sewing machine, I can't tell you. I had never looked through one of my United Company leases until my talk with Mr. Winslow. I presumed the auxiliary machines were tied up with the Goodyear stitcher, but I don't know even now. We paid three-quarters of a cent royalty on the stitcher only. The auxiliaries were on a yearly rental. We put in a Haverhill stitcher and channeling machine, but used no Goodyear auxiliaries with it. If we were going to use the Haverhill
362 machines commercially, not experimentally, we would have to use the Planet rounder. I don't think that is an auxiliary. The breaking down machine is a simple machine which you can easily rig up by hand.

When Mr. Gray called, we had bought the Haverhill machine. He said there were 2 alternatives—to use United machines and not the others, or to pay an initial premium on the United machines and use them with other machines, without the Gem insole rebate. The Gem insole is not used in turn shoes, but it is used in welt shoes, which we were considering making, though we had not yet made any. After seeing Mr. Gray, I took it up with Mr. Winslow. Mr. Edwin P. Brown was present at my first interview with Mr. Winslow and he and Mr. Henry B. Endicott at the second. The conversation I have testified to occurred at the first interview. I had originally opened up the question with Mr. Winslow by letter.

(The witness produces certain letters, which are identified, introduced, read by counsel, and marked as follows:

Letter dated July 29, 1911, from George A. Learned Company to Sidney W. Winslow, is marked "Defendants' Exhibit 77." Letter dated August 3, 1911, from Mr. Winslow to George A. Learned Company is marked "Defendants' Exhibit 78." Letter dated August 3, 1911, from George A. Learned Company to Mr. Winslow is marked "Defendants' Exhibit 79."

The WITNESS. That letter was apparently dictated by me without being signed; 80, not 79, was my reply to 78. I wrote 79 before receiving 78.

Letter dated August 4, 1911, from George A. Learned Company to Mr. Winslow is marked "Defendants' Exhibit 80." Letter dated Boston, Mass., August 4, 1911, from S. W. Winslow to George A. Learned Company is marked "Defendants' Exhibit 81."

The WITNESS. I think he wrote 81 before receiving 79.

Letter dated Boston, Mass., August 8, 1911, from S. W. Winslow to George A. Learned is marked "Defendants' Exhibit
363 82." Letter dated August 14, 1911, from George A. Learned Company to Mr. Sidney W. Winslow is marked "Defendants' Exhibit 83." Letter dated August 15, 1911, from S. W. Winslow to George A. Learned Company is marked "Defendants' Exhibit 84." Letter dated August 21, 1911, from George A. Learned to S. W. Winslow is marked "Defendants' Exhibit 85.")

I called on Mr. Winslow a second time in December. Mr. Endicott wrote and asked me to come and see him and he asked me to see Mr. Winslow. I had been telling people what Mr. Winslow had said to me, and it had come to his knowledge. Mr. Winslow denied making the statement that he would drive me out of business if we did not throw out the other machines. I told him Mr. Brown was there and would remember the statement. That was the substance of the conversation. When I

left I said I was glad that condition did not exist, and that it was altogether a wrong impression he had given me in August. I did not express any desire or intention of correcting any statements I had made to others about Mr. Winslow's remarks. I did not desire to correct any statements I had made because I hadn't made any false statements about it. I had made a statement to Mr. Harriman and perhaps to some other people. It was not understood when I left Mr. Winslow's office on the second occasion that I would correct those statements. When I came in the second time I did not state during the conversation that there was no foundation for the statements that were made to Mr. Harriman.

(Letter dated August 28, 1911, from E. P. Brown to George A. Learned having attached list headed, "List of machines showing initial payment on the departmental independent lease, and sale prices on general department machines in the factory of George A. Learned, Newburyport, Mass." is marked "Defendants' Exhibit 86.")

This letter shows the initial payments for independent leases on machines which the Learned Company then had. My figure of three thousand dollars for initial payments was what it would cost me to put in the line of welt machinery which I contemplated. I did not accept the proposition.

(Letter dated December 6, 1911, from George A. Learned to Sidney W. Winslow is marked "Defendants' Exhibit 87.")

Defendants' Exhibit 87 was a letter which was written in consequence of what was said at the interview, on December 5th.

364 (Letter dated December 18, 1911, from S. W. Winslow to George A. Learned is marked "Defendants' Exhibit 88." Letter dated December 20, 1911, from George A. Learned to Sidney W. Winslow is marked "Defendants' Exhibit 89.")

Defendant's Exhibit 88 is a letter which was written to me by Mr. Winslow under date of December 18th, and Exhibit 89 is my reply. That ended the correspondence, and I have no recollection of having received any letter dated December 27th. As to the copy of a letter dated December 27th, which you have shown me, I have no recollection of having received that letter.

I am still manufacturing shoes at Newburyport, and Mr. Winslow has not disturbed me at all. I am still using the Haverhill machine and also the United Company's machines. The alleged threat has not been carried out, or attempted to be carried out, except that I have not been able to get any other machines from the United Company that I might want. I have applied for other machines, clicking machines. I did not

make a written application. I spoke to two men who were down there at one time. I presume they were agents. I have made no application to anybody in authority at headquarters for a clicking machine. I have for heeling machines. I met Mr. Connor about a year ago or so with reference to another heeling machine. I did not specify what form of lease I wanted it on. Nothing has ever been done about the offer made to me by Mr. Brown in the letter in which he offered us other forms of leases (dated August 28, 1911, and marked "Exhibit 86"). The offer has never been withdrawn, so far as I know, and we have never taken any notice of it.

Direct examination resumed:

They refused to give me a heeling machine. "In view of our existing relations," was all I got from Mr. Connor. I did not specify any form of lease. I didn't know anything about different forms. I supposed it cost one hundred dollars initial payment and a quarter cent per pair royalty. I had no
365 correspondence about it. I wasn't much concerned about it. They also refused clicking machines.

Cross-examination resumed:

I asked for the McKay heel-loading and attaching machines. That was not one of those offered to us in Mr. Brown's letter of August 28. We had one which was played out and its use discontinued a little while ago, 2 or 3 months. We have written them we wanted to return it. We don't see that we haven't lived up to our contracts. When we made those requests we did not signify any intention or desire to make any change about living up to the contracts. We have two Pettingill nailing machines. That is a Haverhill machine. We use no clicking machine.

Direct examination resumed:

The heeling machine I have mentioned is made by the Haverhill Machine Company.

Cross-examination resumed:

We are using the United slugging and edge-setting machines. The others are set aside because we feared it might be a violation of our contracts to use them. We set them aside as soon as we fitted up with Haverhill machines, which we are using right along now.

Direct examination resumed:

We make about 2,000 pairs of shoes per day. All are turn shoes, no welts.

366 JUNE 11, 1913.

LOUIS H. HARRIMAN, witness for the United States.

My name is Louis H. Harriman. I live in Haverhill, Mass. I am a patent attorney, and have been treasurer of the Haverhill

Shoe Machinery Company. I have been a director since its organization, early in 1907. I have general oversight of its business. I know personally of difficulties we had in placing machines. I have acquired it through personal solicitation of manufacturers and reports of agents of the company.

The dealings in the matter of the Herrick Shoe Company were between me and Mr. Fred Herrick, of that company. He asked for a guaranty to refund him for the royalty charged on the clicking machine lease on all shoes cut on clickers and sewed on independent machines, 1¾ cents a pair, with 50% off for prompt payment, and also the royalty for turn sewing, 1½ cents a pair, with 50% off, so that, if Herrick operated our machines, we would have been liable to have paid three and one-quarter cents a pair for all shoes sewed on our machines. We said we were willing to defend any suit brought to collect the royalty, but dared not assume the risk of having to pay it if judgment was rendered for the United Company. We removed our machine, as Mr. Herrick would not operate it without this guaranty. We also had to remove the heeling machine so Mr. Herrick could get the stock which was a rebate on his Goodyear sewing royalties, which he said amounted to something like three thousand or four thousand dollars.

Our machines were operated for a time and then removed from Hilliard & Tabor's factory, and were removed for the reason given by Mr. Hilliard.

We had a turn sewer in the Lynch & Sherman factory which had been operated but a short time when they telephoned
367 us to take it out, as an agent of the United Company had informed them it violated their lease with that company.

Mr. CHOATE. That testimony I object to. That does not connect us in any way with it except as it is a hearsay statement as to what somebody claiming to represent the United Company had said. May that answer be stricken out?

PUTNAM, J. It will not be stricken out; is is subject to your exception.

Mr. CHOATE. It seems to us a clear violation of the hearsay rule.

PUTNAM, J. It is all hearsay.

BROWN, J. I think it is arguable, Mr. Choate, whether or not it may be evidence of a substantive fact if it be proved that a large number of persons, agents of the company, made substantial statements in this way. A man goes to a manufacturer, he gets from him an answer stating that he has been instructed by the agent; that occurs fifty times, we will say; may that not be

evidence of the fact that such instructions were given under the orders of the Shoe Machinery Company?

Mr. CHOATE. Yes, your honor, I think so; very likely; very cogent evidence.

BROWN, J. So there are three aspects.

Mr. CHOATE. But my difficulty is that we have not got the proof that that statement was made by the agents of the Shoe Machinery Company.

PUTNAM, J. I agree with you about all that.

Mr. CHOATE. It seems to me there is the defect in the chain of evidence. We haven't got that link at all.

BROWN, J. May it not be inferred from the fact that a large number of persons make that statement in the course of business?

Mr. CHOATE. No; your honor. I submit that it can not be inferred.

368 BROWN, J. I think that is arguable. I don't rule that it is, but I think that is an aspect that will have to be considered.

Mr. CHOATE. Take any rumor. Fifty people whom you meet on the street report that a former chief executive of this nation had a certain habit and a newspaper prints it as a fact. That rumor does not establish the fact, no matter how many people say it.

BROWN, J. This is a different thing from a rumor. This is a case of statements made in the course of trade, supported by the improbability that persons would agree in making such statements if there were not a common origin for them. So it might be unsafe to rule it out. All your rights are reserved as to its effect.

BROWN, J. It may be that on a failure to connect it more definitely we shall hold it of no consequence.

Mr. CHOATE. Very well. That is a fair way to deal with it.

The WITNESS. Therefore, we took it out within a month after its installation.

We installed some channelers with W. S. Chase & Company and then a turn sewer in 1910, but about a year ago we were told to remove our machines by Mr. Herbert Chase because he had been sued for patent infringement on a heel-burnishing machine by the Xpedite Company, and he told me that one of the conditions of settling the suit was his discontinuing our machines. He also gave the reason that he was violating his leases. We had to remove every machine we had in his factory, two channeling machines which he had been operating a number of years, a turn sewing and heeling machine.

We installed a channeling machine in 1908 with Carleton & Hunt, of Haverhill, and a turn sewing machine in 1910. During the latter part of 1911 Mr. Hunt said he had tried to get a set of machines for making welt shoes from the United Company, but could not get them unless he discontinued the use of our turn sewing machine, so he took it out and returned it to us.

We installed a turn sewer and channeling machine with George E. Leavitt & Company, of Haverhill, about May, 1901.

We had two turn sewers and two channelers in the factory of N. D. Dodge & Son in 1911. Their use was discontinued because we could not supply a line of welt machinery which they wanted and the United Company would not do so as long as they used our machines.

We had a sewing machine with F. M. Hodgdon, but it
369 was ordered out without any reason being assigned.

We began marketing a channeling machine in the latter part of 1907. The United Company furnished without charge a channeler—an auxiliary with no royalty charge—with their sewing machine. It was inferior to our machine as it had a spike feed wheel which lacerated the substance of the sole through which the stitches went which attached the uppers to the sole. Our machine avoided that difficulty. The effect upon the trade of the method used by the United Company in putting out its channeling machine as an auxiliary machine, at a nominal price, and without royalty other than the royalties upon the principal machines, is to prevent a competitor marketing a new machine unless it is so far superior to the machine which the United Company puts out that the manufacturer is willing to pay for it, although he can get the United Company's machine for nothing.

We do an interstate business and are endeavoring to extend our trade into other States. We do business in at least six States besides Massachusetts and abroad. We come into contact with the United Shoe Machinery Company in other States of the Union.

We make principally machinery for making turn shoes. The catalogue shown Mr. Webster purports to contain machines or advertisements of machines to complete a factory for making turn shoes.

Turn factories use a turn sewer, turn channeler, sole splitters, sole-edge molders, edge trimming and setting machines, buffers and heel-attaching, heel-trimming and heel-breasting machines; some factories require loose nailers and sluggers, but not all. Additional machines needed for welt shoes include the laster, outsole stitcher, and others. McKay shoes require other impor-

tant machines, a McKay sewing machine, which we do not make, and lasting machines for McKay work. Our stitching machine can very easily be turned into a welter by putting a welt guide on it at a cost of about five dollars or less. It can not be used in the manufacture of McKay shoes. I heard Mr. Webster testify as to the capacity of our factory. I think his statementt were correct.

370 Cross-examination:

Even if we put a guide on our welt sewing machine, we have no outsole stitching machine to furnish with it unless we get it from others. The machinery we manufacture cannot make welt shoes because of that omission and several others. Our channeler was brought out in 1907. It was the first machine we brought out. The turn sewing machine followed in the spring of 1910. The channeler can be used on welts, but is especially adapted to turns. It was first put out on a royalty basis. We had no turn sewer for it to go with. The United Company had for years been supplying its turn sewing machine with a channeler to go with it. So far as I know that was not a new plan devised by the United Company to prevent our getting into the market, and so far as I know the Goodyear Company, which furnished a channeler with its turn sewing machine, never charged any royalty for the channeler.

371 Q. Have you ever adopted the practice in marketing your turn sewing machine with your channeler or furnishing your channeler without charge, or on a nominal charge, in connection with the turn sewing machine with which it is peculiarly adapted to operate?

A. We——

Q. Can you answer that yes or no, sir?

A. I don't think I can.

Q. If it needs explanation, make it, please.

A. We put out the channeling machine alone on a royalty, as I have previously answered. We also put out the sewer and the channeler together at a certain amount because on account of the lease conditions the manufacturer cannot use the channeler of the United Company——

Q. I am not asking you anything about the channeler of the United Company. I am asking you if you ever put out your channeler with your turn sewing machine, and you say yes.

A. Yes.

Q. What is the royalty which you ask for your turn sewing machine alone?

A. We never have put that out alone.

Q. You ask, at any rate, one rate for your sewing machine without the channeler, and you ask a less rate for your turn sewing machine with the channeler?

A. We have never been asked for a price on the turn sewing machine alone.

Q. Then do you always put it out with the channeler?

A. We always have to.

Q. With the channeler?

A. We always have to.

Q. You always have to?

A. Yes.

Q. You mean as a matter of business it is necessary for the two things to be put out together?

A. On account of the leases of the United Company.

372 Mr. CHOATE. That is a very good argument, Mr. Harriman, and I notice you have been anxious to make it, but you know as a lawyer that it is not an answer to my question, don't you?

The WITNESS. I was simply stating the actual trade conditions.

Mr. CHOATE. I ask that that be stricken out.

Mr. FOWLER. I think that is responsive, if the court please. He asks if it is on account of trade conditions. He answers that it was on account of the leases. That answers the question.

(The question and answer are read.)

PUTNAM, J. Strike it out.

Mr. FOWLER. I want to reserve an exception, your honors. I want it still to remain in the record.

PUTNAM, J. It is not responsive.

BROWN, J. Leave it in and reserve your right to argue.

PUNAM, J. Read that question and answer again

(The question and answer previously read are again read.)

PUTNAM, J. Are you satisfied with the answer?

Mr. CHOATE. I objected to it and asked that it be stricken out.

BROWN, J. It is a question whether it shall be stricken from the record or remain on the record, the question of its admissibility to be subsequently argued.

PUTNAM, J. Why do you want it stricken out, Mr. Choate?

Mr. CHOATE. Because it is not responsive to my question.

Mr. FOWLER. I suppose your honors would rule that on redirect examination I would have a right to ask him that question.

PUTNAM, J. Oh, yes.

Mr. FOWLER. What would be the difference?

Mr. CHOATE. I will withdraw the question and try to get at what I want in another way.

Q. Do you mean, Mr. Harriman, that you have never in any instance put out any turn sewing machines without the channeling machine going with them?

A. Not to my knowledge.

Mr. FOWLER. I submit, may it please the court, whether or not he has the right to withdraw that question, after he has just propounded the question and has found out what the answer was, and has concluded that it is running into an examination that he probably doesn't want. I submit he hasn't got the right to withdraw it and cut off reexamination on that question.

PUTNAM, J. The fact is that this matter is of so little consequence that I haven't recalled what the questions and answers were.

Mr. FOWLER. I don't think one ought to be allowed to fish, and and then draw out when his finger is caught.

BROWN, J. We have passed on the point; Mr. Choate may go on.

373 The WITNESS. We put out no other machine on a royalty basis with the turn sewing machine. But we put out a sole molder, at $25, habitually with the turn sewer. When there are more soles channeled than sewed we charge a royalty on the channeler for the excess soles that are channeled. If the same number are sewed and channeled we charge one royalty for the two. We have a royalty fixed for the sewer alone. The sum of the royalty for the turn sewing machine used separately and the royalty for the channeling machine used separately would be more than the single royalty on the two used together. Herrick was using United turn machines and clicking machines. I saw his leases. I wanted to install one or more of our turn sewers. We put them in May, 1911, and they were there for a month. There was no completed transaction with Herrick. Our machines were put in his factory and tried. He found our machines satisfactory. No money had passed and no leases had been signed. The additional royalties which
374 he might have had to pay if he kept our machines were three and a half cents per pair, with a discount of fifty per cent if paid the next month, which would leave only a cent and three-quarters per pair net. We could not furnish a clicking machine which he wanted. We simply suggested that we would furnish him a turn machine, and he had that alternative. He said he would take the alternative if we would stand the difference. We would not guarantee the additional royalties, as we were to get only a third of a cent a pair. I don't know how many United Company turn machines he had when ours was installed—proba-

bly two. Our turn machine would have displaced one of the United Company's machines had it been used. I don't say for sure that it would have. I don't know whether it would or not. I simply say it probably would. I don't know anything about it.

Hilliard & Tabor had a turn sewer and a channeler from the United Company, but owned their own heelers, when we installed our turn sewer, channeler, and heeler. Our agents, or I, solicited him to take our machines. They were installed in December, 1910, and removed in August, 1911. No lease passed, but they paid us a royalty. A definite oral understanding was arrived at, but none in writing. They had formerly used one of our channelers—never our turn sewer and channeler together. They took our machines on trial for thirty days. They had one or two United Company turn sewing machines. Taking our machine might have displaced one of them. I do not know whether their business was increasing or not. Possibly what I was doing was to offer my machine to a man already using the United's and suggest that he displace one of their machines with ours. That may be true in each of these instances.

In most of the above instances I knew I was asking the manufacturers to displace the United Company machines and use ours. I pointed out to many of them that taking our machines would be in violation of their leases from the United Company, but that I did not think the leases valid and we would contest any suit. I stated we would back them in any suit for infringement by the United Company.

375 Q. Your company has been sued for infringement by the United Company on its heeling machine, hasn't it?

A. There have been several suits brought; yes.

Q. And a number of these instances where people asked you to remove your machines arose out of the fact that they had machines upon which they or you were being sued for infringement?

A. There was no instance of that sort when that reason was assigned. We agreed to stand back of any damage.

Q. Just a minute. You were sued for infringement on both your heeling and your channeling machines, weren't you?

A. There was a suit brought on the channeling machine, on which we agreed to a judgment, as it was a matter of no consequence to us.

Q. In the suit on the channeling machine you consented to a decree?

A. We did.

PUTNAM, J. I don't think we want that, Mr. Choate. We don't want to try a patent suit here, if we can help it. That isn't the

proper way to prove it. If you want to prove it, prove it by the record. Of course it is all right to ask him if there was litigation.

Q. Well, your company consented to a decree against it on the channeling suit, didn't it?

A. We did.

Mr. FOWLER. I object to that, unless I am permitted to prove the number of suits that have been brought against Mr. Harriman and his company, and that have failed.

PUTNAM, J. What do you say, Mr. Fowler?

Mr. FOWLER. I say I object to proving that matter in that particular way—as a matter of fact, it is unimportant anyway—unless I am permitted to show the number of patent suits that have been brought against the company, in which the United Company have failed.

PUTNAM, J. That is just the trouble. I don't think it ought to be gone into. I think it ought to be stricken out.

Mr. CHOATE. I offer it, if your honor please, in connection with his testimony as to the removal of those channeling machines from certain factories, which the United States offers——

PUTNAM, J. Bring the record here.

Mr. CHOATE. Which the United States offers as some attempt on our part to get a monopoly.

PUTNAM, J. The evidence you put in was all right up to the consummation. When you come down to what was done in court, this court will protect itself. You must produce the record.

Mr. CHOATE. I might only suggest that the fact that their company consented to a decree might have some bearing upon the question.

PUTNAM, J. Bring the record in and find out what they consented to.

BROWN, J. Consent to a decree does not show willingness by any means. A large part of consents to decrees in patent cases is not because of willingness to submit on the part of the person who signs his name. He has had enough.

Mr. CHOATE. Perhaps it might show recognition of the fact on the part of that person that he is in the wrong.

Mr. FOWLER. I think we can show that there wasn't a consent to it at all.

376 The WITNESS. There are no suits pending relating to the turn-sewing machine. There are infringement suits pending on the heeling machine.

Direct examination resumed:

(Statement showing number of each kind of machines sold or installed by the Haverhill Shoe Machinery Company, the date

of installation or sale, to whom sold or with whom installed, and on what terms, is marked "Plaintiff's Exhibit 161.")

377 JUNE 12, 1913.

CHARLES A. HAMEL, witness for the United States.

My name is Charles A. Hamel. I live in Haverhill. I have been engaged in the shoe-machinery business for ten years in the United States, and previously to that in Canada. I was first connected in the United States with the Duplessis Shoe Machinery Company, which began business in the United States in Haverhill in 1903 and made the following machines: Loose nailer, slugger, loose tacker, bottom leveler, heel compressor, sole layer, rapid stitcher, turn stitcher, rough rounder, insole channeler, outsole channeler, molder, lip turner, welt skiver, bobbin winder, welt beater, welt groover, channel opener, shank skiver or shanking-out machine, inseam trimmer, pegging machine, standard screw, stitch separator, wire tacker.

I succeeded the Duplessis Company, which went out of business in 1909, and continued to make all the machines named except the heel compressor.

(From the separate answers of the witness as to the number of his machines sold in the United States and abroad the following table is compiled. It does not appear to have been made an exhibit.)

Table showing number of machines made by the Duplessis Company and its successors and sales in the United States and abroad.

Name of machine.	Number sold in United States.	Number sold abroad.	Total number put out.
Loose nailers	24	31	55
Sluggers	22	13	35
Loose tackers	6		6
Levelers	5	55	60
Heel compressors	00	7	7
Sole layers	13	6	19
Rapid-outsole stitchers	41	20	61
Turn and welt stitchers	86	63	148
Rough rounders		19	19
Insole channelers	70	20	90
Molders	35	43	78
378 Lip turners	127	257	37
Welt skivers	20	13	33
Bobbin winders	20	22	42
Welt beaters	25	13	38
Welt groovers	25	10	35
Channel openers	15	14	29
Shank skivers	1		1
Inseam trimmers	3		3
Pegging machines	0	28	28
Standard screw	1	3	4
Wire tackers	1		1
Outsole channelers	4	10	14
Stitch separators			

My company does an interstate business, and we are still trying to market our output.

I produce a statement showing companies and persons to whom the Duplessis Company and its successors have sold, or with whom they have installed machines, and the location of such companies and the year when each machine was sold.

(This statement is marked "Plaintiff's Exhibit 159l.")

Our machines are sold outright.

Cross-examination:

The loose nailer and slugger, named in the summary on the last page of plaintiff's Exhibit 159, are all the metallic fastening machines needed in making a welt shoe. All the machines on our list are used for bottoming operations, but do not comprise a complete list of all the machines used for bottoming. We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes. Our turn machine has a welt attachment. Our loose nailer and slugger make a complete set of metallic fastening machines for either a welt or McKay shoe. On a good many shoes we don't use a slugger at all where wooden heels are used. There
379 has been no interruption in the business of making the machines on our list since it was started by the Duplessis Company in the United States in 1903. I have been ready at any time to furnish machines of these different kinds to anyone who wanted them.

380 JUNE 12, 1913.

NELSON H. SEELYE, witness for the United States.

My name is Nelson H. Seelye. I live in Winchester, Mass. I am engaged in machinery and millwright business. I manufacture machines which, used in connection with dies, cut out material such as leather, cloth, rubber, etc. I have been in that business since 1889. The company was first called the Hawkins Machinery Company and made beam die presses or dinking machines for dieing out the soles of shoes, among other things. The machine for cutting the upper is the clicking machine. We were engaged in that business when the United Company was formed. We sold from fifty to one hundred per year to shoe manufacturers up to that time. We continued to place on the market our machines after the formation of the United Company. After the formation of the United Company we made the same efforts to sell the machine as we had always made. We did not have agents traveling, but we advertised. After the United Company put a similar machine on the market it was more difficult to sell our machines because of the apparently more favorable price it could make. The two machines

were about the same in quality and capacity for work. The United Company leased its machines for an installation charge of about one hundred and fifty dollars for the longest machines, or about one-half their and our selling price of three hundred and fifty dollars, and made no other charge except for parts. The machines remained their property. Their selling price and ours have always been about the same.

(Counsel for the United States offers to prove that the machine of the United Company costs that company more than one hundred and fifty dollars to build. The evidence was excluded.)

After the formation of the United Company our sales to shoe manufacturers fell to about one-quarter of what they were, although we used the same efforts we had previously used.

381 Cross-examination:

Our machines are used for quite a variety of other purposes than cutting leather. They are used for cutting rubber, cloth, paper, leatherboard, strawboard, etc.—anything that can be cut with a die. The United Company offered its machines for sale at the same price as ours, and it also offered them on an annual rental of fifteen dollars. We never tried to rent any of our machines, but adhered to our old plan of one basis, sale only.

Before I went on the stand I had not made any classification of the number of machines that I sold to shoe manufacturers, either before or after the United Company was formed. It is not my practice to do so in my business and to keep statistics of the sales to shoe manufacturers. I have not made any study at all to ascertain to what extent my sales to shoe manufacturers are different from what they used to be. I thought no study was necessary. I am not guessing; I can tell from experience. By experience I mean observation of the business—the shoe manufacturers' purchases of me. I have not made any investigation of my books. I have not kept track of the purchases they made of me. I don't need to. I have that in my head. I carry my sales ledger in my head to that extent. I would not say that I could carry it in my head so that I could figure out percentages. I have quoted approximate figures in each case. It would not be quite right to say that I had given no attention to this particular question before I went on the stand.

382 JUNE 12, 1913.

ZOTIQUE BEAUDRY, witness for the United States.

My name is Zotique Beaudry. I am in the shoe machinery business, inventing and manufacturing. I have invented several—5 or 6—heel burnishers—some of them 35 or 36 years ago.

I invented the heel burnishing machine that is manufactured by the Xpedite Company. I sold the patent on that machine to Mr. Tuttle and subsequently it passed to the Xpedite Company. Later I invented another which I sold to the United Company.

(Counsel called the attention of the court to the covenant with respect to future inventions and competition in witness' contract with the United Company as stated in the bill.)

Since then I have made no attempt to invent any improvement on the heel burnishing machine. I don't know whether the United Company has developed that patent and manufactured a machine in accordance with it. I don't see any out and I have never heard of any.

(No cross-examination.)

383 JUNE 12, 1913.

NED PIKE, witness for the United States.

My name is Ned Pike. I install and handle machinery for the Haverhill Shoe Machinery Company; also solicit business. I have been employed by them since August, 1908. I have traveled in New York, Ohio, Missouri, Pennsylvania, New Jersey, Massachusetts, New Hampshire, and Maine, trying to install machines in these States. I have done so except in Maine and New Jersey. I met with serious difficulty in installing our machines. In the factory of Ashe, Noyes and Small, Auburn, Maine, I attempted to install machinery, and they told me that under the leases of the United Company it would be impossible for them to install our machinery, unless they laid themselves open to a great deal of trouble—conflict with the United Company. In the case of Dunn & McCarthy of Auburn, New York, they told me they would like to consider the proposition of putting in my machines, particularly the turn sewer, but, under the United Company leases, their toe-laster and heel-seat machines would cost them more than any saving that they could make on our machines. Krippendorf & Dittman, of Cincinnati, ordered our machines from another solicitor, and countermanded the order and stated to me when I solicited them later that they did not dare put them in on account of the leases of the United Company they were operating under. The Syracuse Shoe Company said it meant altogether too much to them to install machines competing with the United Company, as it would make lots of trouble for them with the United Company. The Irving Drew Shoe Company, of Portsmouth, Ohio, said they were owned body and soul by the United Company as far as shoe machinery was concerned. These are all the instances which stand out prominently in my mind. I do not say that those are the only troubles I had.

384 Cross-examination.

I talked with Mr. William Gates, superintendent of Drew & Company, about installing a turn sewing machine. They were making turns and welts and I think McKays. They were already equipped with turn sewing machines of the United Company. I was asking him to try some of our machines. I just stopped in as a part of my general practice of calling on anyone who might possibly be interested. He had not sent for me. He made the reply which I testified to when I solicited him to take some of our machines. I kept no memorandum of these conversations, but state them from memory. I was recently asked to recall and testify about them. I am giving you his exact words as nearly as I could quote them after this lapse of time. I should say they were very nearly his exact words.

Q. Your general statement about your practice and your occasion for calling on these other gentlemen is the same in all cases as it was in the Drew case?

A. Practically the same. I will say that we had auxiliary machines installed in that place as in some of the others, and it was calling upon those and soliciting——

Q. Suggesting, I suppose, that they substitute your machines for the machines that they had?

A. Well, not always in that case. There naturally would be a natural increase in business, which would always necessitate the——

Q. Very possibly, but in each case that you have told of you went soliciting?

A. I did.

Q. Without having been sent for?

A. I did.

Q. And your suggestion as such solicitor was that they take some of your machines to do the work which other machines were already doing?

A. To do the work similar to the work that these machines were doing; yes.

Q. And do you know what or how many machines of the United Company any of the other people had?

A. I couldn't state positively.

Q. In your experience with the Haverhill Company have you equipped any new factories, new manufacturers—I mean manufacturers who are beginning in business?

A. We have equipped some small manufacturers.

Q. And so far as you are able to furnish good machines, or a line of machines, you stand with new manufacturers as well as the United Company?

A. Why, you mean that our machines stand well in the estimation of these people?

385 Q. No. So far as your machines are as good as the United Company's you would have as good a chance to equip a new manufacturer as they would?

A. Provided they had not—you mean a manufacturer who is embarking in the enterprise for the first time?

Q. Yes; who hadn't signed any leases at all.

A. Why, I don't know why not.

Q. So in such cases the machines which succeeded would succeed on their merits?

A. In all such instances we would naturally believe that that would be the case, unless there was some ulterior motive.

Q. From your knowledge of the trade since 1908 have the new manufacturers taken your machines to so large an extent that they have taken the United Company's machines?

A. Nothing like it.

Q. Then, if your earlier answer is true, the United Company's machines have won out on their merits?

A. I said if there wasn't other things to be considered.

We have five men all the time on our repair staff located at the Haverhill office. At the present time manufacturers out of the reach of those five, for instance in Missouri, would be at a disadvantage as to service. We have no one who could give service in Missouri. Very many manufacturers maintain machine shops proportionate to the size of their business; but where the services of expert mechanics who are familiar with the machines can be obtained, that is usually desired. The question of service in taking care of machines is an important factor in selling machinery, and usually comes up when we are trying to place our machines. We have no depots for supplies and parts in Missouri, Ohio—distant States. Our machines are somewhat

386 complicated and have a good many different parts, which break from time to time. Delay in obtaining new parts and repairs would be a serious handicap—as, for instance, if an Ohio manufacturer had to send to Massachusetts. Usually there is a steady flow of the product from one machine to another in shoe factories, though most always they have additional machines. Also the volume of products varies with the season; some parts of the year there is a very large run, and the factory is at the height of its capacity.

Direct examination resumed:

I was asked to think up the particular instances of difficulty to which I have testified, only this morning.

387 JUNE 12, 1913.

SOLOMON M. CUTTER, witness for the United States.

My name is Solomon M. Cutter. I live in Hartford, Connecticut. I now manufacture horse nails, but have been in the shoe-machinery business, beginning twenty-five years or thirty years ago with the Wire Grip Fastening Company in Boston, in which I had a very small interest. I became general manager of the Standard Shoe Machinery Company. That was after the formation of the United Company.

(After the witness had stated that about the time he entered the employ of the Standard Shoe Machinery Company he had conferences with Mr. Winslow or Mr. Brown or Mr. Wilson, of the United Company, he was asked what was said at those conferences. The defendants objected. The United States offered to prove that the witness, who, inselling out his interest in the Wire Grip Fastening Company, had agreed with the McKay Shoe Machinery Company not to reenter the shoe-machinery business, consulted the president and other officers of the United Company with reference to his being allowed to enter the employment of the Standard Shoe Machinery Company; that he was advised that he might do so, but upon refusing to reveal its secrets to the United Company was sued for breach of contract, and that nothing further came of the matter. The evidence of the witness's conversations relating to this subject matter with Messrs. Winslow, Brown, and Wilson was excluded, and the United States reserved an exception.)

I was manager of the Standard Company for about a year and a half, but had nothing to do with installing machines in factories. I talked with Krippendorf & Dittman, Mr. Reed, and Crooks, Root & Company about the use of the Standard machines.

(There was no cross-examination.)

388 JUNE 12, 1913.

JAMES N. DARRAH, witness for the United States.

My name is James N. Darrah. I live in New York City, and am in the real-estate business. I was in the shoe-machinery business in 1899–1900. I was connected with the Standard Shoe Machinery Company. Its capital stock was $5,000,000—$4,000,000 issued, of which one million and a half was preferred and two millions and a half was common. Mr. Ebenezer B. Beecher, of New Haven, was president; F. C. Pingree, of Pingree & Smith, of Detroit, shoe manufacturers, was a vice president. The other vice presidents were T. D. Barry, of Brockton, of the firm of T. D. Barry & Co., shoe manufacturers; E. P. Reed, of Rochester, of the firm of E. P. Reed & Co., shoe manufacturers; and W. W. Spalding, a shoe manufacturer of Haverhill. I was a director

and chairman of the executive committee, and took an active part in the management.

The Standard Shoe Machinery Co. was a combination of the Bay State Shoe Machinery Co., the Woodward Mfg. Co., the Sinning Lasting Machine Co., and the Buzzell Edge Trimming Machine Co. It manufactured a full line of bottoming shoe machinery in all its branches. Its principal offices were 165 Essex Street, Boston, Mass.; its factories were in South Boston.

In April, 1900, I met Mr. Barbour, a director of the United Shoe Machinery Company, at the office of Mr. John R. dos Passos, my personal attorney and counsel for the Standard Co., 20 Broad St., New York.

Q. Please state what was said at that conference as nearly as you can.

A. I had never met Mr. Barbour until that morning. Mr. des Passos sent a messenger——

Mr. CHOATE. You are simply asked to state what was said.

The WITNESS. Well, Mr. Barbour was talking about the Standard Shoe Machinery Company, and Mr. des Passos—shall I state what Mr. des Passos said, or just Mr. Barbour?

Q. State what was said by all three of you.

A. Mr. des Passos said: "I want you to meet Colonel Barbour, who is a director in the United Shoe Machinery Company, and he seems to be very much upset because he has a large investment in the stock of the United Shoe Machinery Company, and he thinks that perhaps it would be better if he could make some deal with you." I said: "What kind of deal do you want?" "Well," he said——

389 Mr. CHOATE. Do you mean Mr. Barbour was present at this time?

The WITNESS. Yes; Mr. William R. Barbour and Mr. John R. desPassos. This occurred in Mr. desPassos' private office, 20 Broad Street. And Mr. Barbour said: "I have a very large investment in the stock of the United Shoe Machinery Company and I don't propose to have that investment jeopardized." "Well," I said, "how is it going to be jeopardized?" "Jeopardized by competition. You are a competing company; but," he says, "you haven't got anything anyway." "Well," I says, "why do you come in here if I haven't got anything? I haven't come in here to get your opinion about our machines. If that is all you have got to say I will go." "No," he says, "sit down. I want to talk to you." I said: "What about the Woodward machine? You seem to think we haven't anything. There are a good many manufacturers who are using our Woodward heel-loader—there is Thomas G. Plant; he is

using the Woodward heel-loader in preference to the McKay heel-loaders. He displaced the McKay heel-loaders"——

I said to Mr. Barbour: "I don't believe our stock is for sale; I don't think you can buy it." He said: "I think you are making a big mistake if you don't sell it. If you don't sell it, if you and Mr. Beecher don't sell, you are making a big mistake. We always try to buy out competitors and if we can't buy them out we force them out." I said: "Do you mean to say you are going to use tactics like that?" He said: "Yes, if you don't do what we want you to." "Well," I said, "then you can go ahead and crush."

Q. Was anything said at that time about the control of banks?

A. That was later in the day. Mr. desPassos and he went out for lunch. Then they returned again and Mr. desPassos then told the proposition that was made by Mr. Barbour.

Q. No; but was anything said by Mr. Barbour about the control of banks during that conference?

A. He didn't put it that way, about controlling banks. He said: "Where are you going to get your money? You can't get any money to compete against the United Shoe Machinery Company. You can't get any banks to back you up. Our influence both in Boston and in New York is so great that you can't do anything."

I had conferences with representatives of various shoe manufacturers regarding the installation of machines. Mr. Krippendorf came to see me in New York, as a result of some correspondence we had with them about installing Standard machines and said while he would like to install them he was afraid; he wouldn't dare arouse the opposition of the United. I also had conversations with Mr. F. C. Pingree and Mr. E. P. Reed. Mr. Reed was using our Turn machines, a machine manufactured by the Bay State Shoe Machinery Co. and we wanted him to introduce more of our machines in his factory and he said he wouldn't like to do so—he was afraid. He
390 said the United Company was such a gigantic corporation that no shoe manufacturer could afford to be a martyr.

The Standard machines were removed from the factory of T. D. Barry & Company, at Brockton, subsequently to my conference with Col. Barbour. I did remember the names of others who were obliged to remove our machines, but I have forgotten at the present time. We had machines in Mr. Caunt's factory at Lynn at one time. Mr. Mark Worthley, of Lynn, was using our Woodward machine and came to see us and said

he was afraid he mould have to return it to us—that the United Company's agents were after him all the time and were making threats to him. I had a number of interviews with Mr. Thomas G. Plant about our Woodward heel loading machines in his factory. He sent for me and told me in the spring of 1901 that the agents of the United Company were getting after him so persistently and it was getting so annoying and offensive that he was afraid he would have to surrender the Woodward machines and take the McKay machines of the United Company.

Mr. Barry, of the T. D. Barry Company, told me he could not come to my office but would meet me at the Essex Hotel. He said he had made a mistake in going to Europe in 1900 when during his absence the machines of the Standard Company had been removed from his factory. We had obtained an order from him to equip his factory with a full line of shoe machinery but lacked some auxiliary machines. Our machines had already been removed from his factory.

(At this point the United States offers to prove that Mr. Barry stated he was compelled by the United Shoe Machinery Company to resign as a director of the Standard Shoe Machinery Company.

Mr. GREGG. A great many of these things taken together form part of the plan of this concern to monopolize the shoe machinery business. In some cases they have held such evidence to be competent under the Sherman Act; that acts standing alone might be perfectly lawful, but a number of them became part of a plan.

The evidence was excluded. The United States reserved an exception.)

The Standard Company was incorporated in October, 1899, and went into the hands of a receiver in December, 1901. It was not succeeded by any other concern as far as I know. I don't know whether machines formerly manufactured by the Standard Company are now being placed upon the market.

Subsequently I saw Mr. Barbour in his office in 1904 or 1905 in regard to patents of the Suffolk Nailing Machine Co.

391 I suggested I might go in the shoe machinery business again and he laughed and said I would make a big mistake.

Cross-examination:

Q. Mr. Darrah, how long have you been in the real estate business?

A. In April, two years ago.

Q. And are you with anybody, connected with anybody, or by yourself?

A. I was with Wood, Harmon & Company up to two years ago—261 Broadway, New York.
Q. Whereabouts were you selling real estate?
A. I was selling in Hartford.
Q. In Hartford?
A. Hartford.
Q. With an office in New York?
A. Why, Wood, Harmon & Company has an office in New York, 261 Broadway.
Q. That is where you were in New York?
A. No, sir. I was selling in Hartford part of the time, and also I sold some of their property in New York to investors.
Q. Where was your office, in New York or Hartford?
A. My office?
Q. Yes.
A. I hadn't any office.
Q. Have you any now?
A. No, sir.
Q. You are in the process of going through bankruptcy now, aren't you?
A. Yes, sir. Your representatives found that out; came to see me.
Q. Well, you weren't concealing the fact, were you?
A. Why, no; certainly not.
Q. What was your business before you went into the real estate business?
A. I was interested in several things—several matters.
Q. Well, we all of us are, I suppose. I say, what was your business before you went into the real estate business?
A. I was a stock broker.
Q. Did you have an office in New York?
A. Yes, sir.
Q. Where was it?
A. I had an office at 52 Broadway.
Q. In your own name?
A. No. I was associated with Mr. Brown—Mr. W. T. Brown.
Q. Well, did your name appear?
A. I think it appeared on the door; yes, sir.
Q. You did business under the name of W. T. Brown?
A. No, sir; I didn't.
Q. What kind of a stock broking business did you do?
A. Why, miscellaneous.
392 Q. Yes; but could you be a little more definite than that?

A. Why, I wasn't a member of the stock exchange. I dealt in what you call unlisted securities. If you came in and had any unlisted securities, I would try to find a customer for you.

Q. How long were you there?

A. I was there two or three years.

Q. What did you do before you did that?

A. What year was that?

Q. Well, you have stated that you have been a real estate broker for two years and a half.

A. Yes, sir.

Q. A stock broker for three years, perhaps.

A. Yes.

Q. Before that; that takes us back to perhaps 1908.

A. 1908. There were two years that I was out of business entirely on account of operations. I had five operations for appendicitis. Two of those years I was unable to do anything.

Q. You didn't have five appendixes, did you?

A. Well, I don't know about the five appendixes.

Q. Those two years you weren't in business?

A. No, sir. I wasn't able to do anything.

Q. Where do you live when you are at home?

A. 200 Wentworth Avenue, New York City.

Q. How long have you lived there?

A. About a month.

Q. Have you any permanent home?

A. New York City.

Q. Whereabouts?

A. 200 Wentworth Avenue.

Q. Where you have been about a month?

A. Yes, sir.

Q. Have you any family?

A. Yes, sir.

Q. Are you married?

A. Yes, sir.

I talked with Mr. Krippendorf about the Standard Company's machines generally. I talked with Mr. Reed about the Bay State machine, and with Messrs. Plant, Caunt, and Worthley about the Woodward heel-loading machine. There were patent suits brought against the T. G. Plant Company, and T. G. Plant, and, I think, Mr. Worthley on the Woodward machine. They did not refer to it in our conversation, or give the infringement

393 suits as a reason for removing the machine. I first heard of this litigation prior to 1899 when I took an option on the Woodward Company's stock. They had a number of machines before that. There was a decision against the

Woodward machine in 1901–2, holding it to be an infringement of the United Company's machine. The Bay State Company was sued by the Goodyear Company for infringement by its sewing machine. That was before the Standard was organized. There was a decision in 1900 in favor of the Bay State Company. The Bay State Company had a sewing machine and had started to develop a stitcher which the Standard Company did develop. There was no litigation about the stitcher, that I remember.

Direct examination resumed:

I produce a list of shoe manufacturers who used machines of the Standard Shoe Machinery Company. (The list is marked "Plaintiff's Exhibit 160.") I know of my own knowledge that these concerns had machines of the Standard Shoe Machinery Company.

394 JUNE 11, 1913.

CHARLES H. MORSE, witness for the United States.

My name is Charles H. Morse. I live in Brookline, Massachusetts. I was engaged in the shoe-machinery business from about thirty years ago. I ceased to be engaged in it in 1906. My company was the Fifield Shoe Machinery Company, manufacturing fifty machines, more or less, consisting of sole cutters, sole splitters, seam rubbers, bottom stampers, welt cutters. Its former name was C. S. Fifield & Company. The Fifield Company was in business when the United Company was formed. Its business amounted to $150,000 to $175,000 a year. About 1901 we had negotiations with the United Company through Mr. Winslow with a view to selling out to them. I think it was about 1901 or 1902—I can't tell exactly. Mr. Winslow telephoned me to call and see him. At that time we were making the machines enumerated and also were putting out the Frechette pegging machine.

I called at Mr. Winslow's office and he said he understood I was putting out a pegging and metallic slugging machine. I told him I was and he said "You don't suppose we are going to allow you to put them on the market." I said I did not know why, and he said it would interfere with their business. He asked me if I would sell my business for $50,000, and I said I would not. We continued in business until 1906, when we sold out to Samuel H. Nichols, of Brockton, Mass.

I had difficulty in installing our pegging machines in shoe factories. I had two machines with W. D. Brackett & Co., of Nashua. They were running successfully and I anticipated putting in more when he wrote me a letter stating they had made a deal with the United, and my machines were returned. The Fifield Machine Co. is now out of business. I can't remem-

ber whether I had trouble with anyone except Brackett. We made all the machines named in our catalog except a few that we only dealt in. We were doing business in this country and in Europe.

395 Cross-examination:

At the time I had the talk with Mr. Winslow referred to my office was at 53 High Street and his office was 205 Lincoln Street. The conversation was at his office. I have no kind of memoranda by which I fix the date in any way. I remember the circumstances, but I don't remember exactly when it was; I think it was in 1901. As to whether I tell by some incident that I remember—I remember the incident of being down there; that is all. I don't think I remember any other incident by which I fix the time of this talk. The talk related to the Frechette pegging and metallic slugging machine. It was about a year after we obtained the Frechette pegging machine which we had got from Carron. We had put out some of them. I can not fix the time, except that it was about a year after the licenses which we had obtained for the Frechette machine. When I met Mr. Winslow in the courthouse the other day I said I hadn't seen him for twelve or fifteen years.

I don't know that my talk with Mr. Winslow was back in the time when he was interested in the Consolidated & McKay lasting machine. I don't know about that.

Q. If it turns out that you got that license about 1895, then this talk with Mr. Winslow was back in 1896 or so?

A. It was previous to that.

Q. It was previous to that?

A. Yes.

Q. Time slips away faster than we realize?

A. Yes.

Q. And this conversation may have been many years further back than you at first thought?

A. I think it was about 1901.

Direct examination resumed:

I went to see Mr. Winslow about the matter in his office at 205 Lincoln Street. I am positive that the United Company was engaged in business at that time.

396 JUNE 13, 1913.

ALEX STONE, witness for the United States.

My name is Alex Stone. I live at 970 Prospect Avenue, New York. I am attempting to manufacture shoes. I have been in the shoe-machinery business in this country and in Europe. I have been export manager for the Atlas Works, at Leipsic,

Germany, and with the Consolidated Hand Method Lasting Machine Company, as expert operator in this country, and as agent in installing machines in continental Europe. I first attempted to install machinery for the Atlas Works in this country in December, 1910. I made an attempt in St. Louis with the Roberts, Johnson & Rand Shoe Company, the Peters Shoe Company, and the Hamilton-Brown Shoe Company, and perhaps the Brown Shoe Co. I attempted to sell—not lease—them machines. My concern makes a complete line of shoe machinery, including welters and stitchers, heeling machines and lasting machines. A few minor machines are made for it in Germany. Mr. Jackson Johnson, of Roberts, Johnson & Rand, told me, "My boy, I know all about it, about the machines you are producing in Germany, and what kind of machines can be made in Germany or in Europe; but, as it is, you know, if you bring over a machine which is constructed in such a way that we drive a cow into it, and on one side ready-made shoes come out, and on the other side ready-made sausages, and you want to sell it to us for ten cents, then we are not allowed to install it or make use of it." He said it was on account of the United Shoe Machinery Company—their leases.

Q. Did you install any machinery with the Peters Shoe Company?

A. No, sir.

Q. With whom did you talk at the Peters Shoe Company?

A. With Mr. Peters, himself.

Q. Did Mr. Peters assign any reason why he couldn't take your machinery?

A. Exactly the same reason. He was the first one I saw in St. Louis. They were awaiting my coming from Europe, and I had a long conversation with him. It was running in the same way, that it was impossible to install any machinery which wasn't from the United, which would compete against the United machinery; but, anyhow, that I should go and see the other manufacturers still individually, and then they would have together a conference with me—all of them.

Q. Did you attempt to install any machinery in the East?

A. Yes; in Lynn, Massachusetts, and Haverhill.

Q. You mentioned the Roberts, Johnson & Rand Company and the Peters Shoe Company, and did you also mention Hamilton-Brown?

397

A. Hamilton-Brown; yes, sir.

Q. Whom did you talk with at the Hamilton-Brown Shoe Company?

A. At the Hamilton-Brown Shoe Company there were from Roberts, Johnson & Rand, I think, Mr. Rand and Mr. Johnson, and from the Peters Shoe Company, and from another concern—there was quite a representation.

Q. Who represented the Hamilton-Brown Company at this conference?

A. I think Mr. Roberts—Mr. Roberts or Mr. McElroy. There were several gentlemen from the Hamilton-Brown Shoe Company there at the conference.

Q. What reason, if any, was assigned by the Hamilton-Brown Shoe Company why they couldn't take your machines?

A. That they cannot, unless the United Shoe Machinery Company will give in to their demand that they should have the liberty to install any kind of machinery they want to; and, as they explained to me, they have given the ultimatum to the United.

In January or February, 1911, the superintendent of Brophy Brothers, of Lynn, said, "Mr. Stone, we can't even talk aloud about it, about talking with you at all about competition machines." The reason they assigned was on account of the contents of the United lease.

I sold machines to nail wooden heels on shoes of the turn variety to Evans in Wakefield, and Guptil in Haverhill. Those were the only two machines I sold in the six weeks I was here.

Cross-examination:

Q. Mr. Stone, how long have you been in this country?

A. At present? I have been here several times; more than a dozen times.

Q. How long have you been here representing the Atlas Works?

A. I have been here representing—once I was here six weeks, and then I was here a year, and now I am here again since eight or nine months.

Q. When did you first come over here to represent the Atlas Works?

A. In 1910, in the summer.

Q. Did you open an office anywhere?

A. Why, yes—not directly an office. I wanted to see first if there was any business.

Q. Did you open an office at any time?

A. Not directly an office; but my address was in the United States Hotel, Boston, where I lived.

398 Q. In the United States Hotel?

A. Yes.

Q. Was that the only address you had?

A. Well, and 535 Massachusetts Avenue, as it was always in the advertisements.

Q. The only place where you could be found would be the United States Hotel or 535 Massachusetts Avenue?

A. Yes.

The Atlas Works did not have an agency or any machine parts or any workmen in this country. Their works are in Leipsic. They are prepared to furnish a complete line of shoe machinery for welt, McKay, and turn shoes. I published the advertisement which you produce.

(This advertisement is marked "Defendants' Exhibit 90.")

I did not attempt to equip any manufacturers who were just beginning business and who had not installed any machinery at all. All the people whom I visited had running factories, and their machinery was already installed. We had received letters from this country from manufacturers. I offered to equip the Roberts, Johnson & Rand factory with a complete equipment for McKay, welt, and turn shoes, except a few minor machines. I offered to equip the Hamilton-Brown Company with our full line. I offered to sell the machines outright.

Q. So that they could give up every bit of their United Shoe Machinery Company's machinery and take yours?

A. No; they couldn't do that—not every bit of it.

Q. You could furnish them with welters and stitchers?

A. Yes, sir.

Q. And lasters?

A. Yes, sir.

Q. And levelers?

A. Yes, sir.

Q. And rounders and channelers?

A. Yes, sir.

Q. In fact, with all the principal machines?

A. The principal machines.

Q. The machines that you could not furnish them were the little machines?

A. No, not so very little.

Q. I don't mean in size, but I mean of minor importance.

A. Oh, not minor, but essential machines.

Q. What did you mean when you said you made all the machines except the minor machines?

A. Well, we make everything, but the way it is here in this country we couldn't bring them over here all we make.

Q. The machines you do not make yourselves you supply by buying of other people?

A. We get them made for us according to our instructions.

399 I offered to equip Brophy Brothers, who made ladies' welts and McKays, with a full line. At Brophy Brothers I talked for about two hours with the superintendent.

I gave in each instance the total price for which I would equip the factories; and they didn't even discuss the question of how soon I could do it, not even the price.

Q. You have been anxious to get employment with the United Shoe Machinery Company, haven't you?

A. Well, after I have seen that I can't—either have to give up my trade altogether here or——

Q. Just answer my question. You have been anxious to get employment with the United Shoe Machinery Company?

A. I have been anxious to earn my living.

Q. Just answer my question, please.

A. Yes.

Q. You have applied to them for work, haven't you?

A. Mr.——

Q. Yes or no?

A. Not directly in the first place.

I did not say I would publish things in the newspapers about them unless they gave me work. I tried to get work from the United Company in February, 1911, after I attempted to sell machines, about two weeks after my visit to Brophy Brothers. I have been back to Leipsic twice since then. I have been sent over here twice since then, still representing the same company. I am not employed by them now. I have given it up automatically. I can't do anything for them.

400 (Letter dated February 24, 1912, from Alex Stone to John H. Connor is identified by the witness and is marked "Defendant's Exhibit 91." Letter dated May 19, 1912, from Alex Stone to John H. Connor is also identified and marked "Defendant's Exhibit 92." Letter dated September 7, 1912, from Alex Stone to John H. Connor is identified and is marked "Defendant's Exhibit 93." Letter from Stone to Connor, dated Sept. 17, 1912, is marked "Defendant's Exhibit 94." These letters, which refer to efforts of witness to obtain employment from the United Company, were read to the court by counsel.)

Direct examination resumed:

The Atlas factory employs three hundred men in Leipsic. It has a capacity of three of each of the principal machines a week, so that each week they could furnish three equipments.

I made a proposition to Brophy that for what they would pay for one and one-half years in royalities I would furnish the

machinery and it would be their property, on the installment plan, paid in eight quarterly installments. I told Jackson Johnson that if he would put at our disposal capital that they would pay in one year in royalties, we might be able to enlarge our plant and furnish them machinery, but as it was we were equipped only for European business. When I said our factory could turn out three equipments of each kind a week, I meant by an equipment a set of machines for daily production of two hundred to two hundred and fifty pairs.

401 JUNE 13, 1913.

JOHN J. DOIDGE, witness for the United States.

My name is John J. Doidge. My residence is South Framingham, Mass. I am general manager of the R. H. Long Machinery Company. I have had that position about two years. I look after the shoe machinery business and am familiar with the sales of shoe machinery that have been made to shoe manufacturers. They have sold three welters. One was sold to the Taylor's Shoe Company, Lynn, which began business about two years ago, for five hundred dollars, on time. One was placed with Taylor's Shoe Company, shoe manufacturers at Brockton, a different concern from the one at Lynn, for five hundred dollars, on time. The third was sold to Dolan, Park Street, Charlestown, a cobbler, who makes some new work. It was sold for five hundred dollars, on time.

We have sold two hundred and eighty-five outsole stitching machines, of which three went to shoe manufacturers and the others to cobblers throughout the country. Of the three which we sold to shoe manufacturers one was sold to A. D. Fisher, Lynn, for four hundred and fifty dollars cash, one to H. M. Hanson Company, Quincy, for five hundred dollars, on time, and the third to Arawanna Moccasin Company for five hundred dollars. They make welt shoes. The two companies last mentioned have been engaged in business about two years.

We have put out four lasting machines, three to the Buffalo Shoe Company, East Pepperell, Massachusetts, for four hundred dollars cash apiece, and the fourth in Salt Lake City, Utah. The Buffalo Shoe Company makes welt shoes and some McKays. They do not use any United Company machines, not that I know of. They have been in business about four years. The machines were sold to them when they first went into business. The one in Utah was sold to the Zion Co-operative Mercantile Association, who make McKay and welt shoes. We got four hundred and fifty dollars for it. They do not use United Company's machines to my knowledge. We have put out five

heelers, mostly to the Framingham Shoe Company, Mr. Long's company. We sell heeling machines for four hundred and
402 fifty dollars. I do not remember any being sold to other manufacturers. We sell the parts for our machines.

Cross-examination:

We produced our stitching machine by copying a Goodyear rapid outsole stitcher, the United Company's stitcher, which we took to pieces in the R. H. Long Machinery Company building. That was done under my direction at the instruction of Mr. Allen Webster, Mr. Long's attorney—one of the attorneys for the United States in this case. That was done around August, 1909. We copied the machine in most all details and our machine is identical with the Goodyear, with the exception of the patented parts. It is put out as the Waldorf stitcher. The welters we put out were bought of the Duplessis Company and sold again. The lasting machine was developed under my instructions. It was not copied in any respect. Our heeling machine is the National heeler.

Some suits were brought for infringement against our company by the United Company a couple of years, I believe, before we put out our stitcher. I don't see how shoe manufacturers could help knowing about those suits more or less. Anybody who looked at it could see that it was a reproduction; built according to the expired patents. Our machine did not have the Baltimore edge attachment. We could not furnish that. Nor did it have the Holmes attachment.

Q. Don't the up-to-date manufacturers almost invariably demand the Baltimore edge attachment and the Holmes attachment?

A. We haven't had any call for it.

Q. No; because you couldn't furnish it.

A. We haven't any call for it.

PUTNAM, J. You have answered the question.

Q. As you observe the up-to-date shoe manufacturers, they do want those two attachments, don't they?

A. I don't know whether they do or not. I think there are a great many shoes made——

PUTNAM, J. You have answered the question.

403 The WITNESS. We have practically completed four hundred and fifty out-sole stitching machines. We are ready to supply to the trade about thirty welters, twenty-five lasting machines, and four or five heeling machines. We make a heel-seat leveler also. We are ready to supply a full line of machinery for welt and turn shoes and we so advertise. We

can supply metallic fastening machines; we have a few of them. We can supply heeling machines.

Direct examination resumed:

Our welter and stitcher are known as the Goodyear (sic) welter and stitcher. We make the following machines: Outsole stitcher, parts for welt and turn machine—getting ready to manufacture that machine—innersole lip turner (a lot of those), welt groovers and bevelers (a lot), welt beaters (a lot), outersole channel openers, Arnold channeler, lasting machines, parts for edge trimming machines, repair machinery, buffing and cleaning machines, twin sole layer, sole leveling machines, National heelers, channel laying machines, studding machines, parts for heel trimmers, heel breaster, heel scourer, twin edge setter, bottom stamping machine. We are getting ready to build welt and turn machines, rough rounders and stitch separating machines. We do not make all the machines shown in our catalogue. We are getting ready to make about all. Some auxiliary machines we buy from others. We have had as many as seventy-five employees, at present about eighteen. There are three buildings to our factory—125 by 40 feet, 65 by 40, 135 by 40—all two floors.

404 JUNE 13, 1913.

FRANK MORRISON, witness for the United States.

My name is Frank Morrison. I live in East Weymouth. I work in the shoe factory of George E. Keith. In April, 1899, I worked in the factory of the T. G. Plant Company. In June, 1910, Eddie Johnson, an agent of the United Company, sent me to see Mr. Wilson, of the United Company.

(The following evidence was admitted subject to defendants' exception.)

First I saw Mr. Wilson alone. We had had some trouble, and he said, "Why don't you strike? We will back you." I said, "It can't be done because we are going to give Mr. Plant a month's time to fix the matter up with us." He said, "Come in and see me when you are through." The month was up and we had a meeting. The day before someone told Mr. Plant what was going on, and they refused us to go in. Then we went down to see Mr. Wilson. Mr. Ross and Mr. Sochat were with me. Mr. Wilson wanted us to start an organization. His offer was if we would organize the place and get him all the information we could for so-and-so machine (sic) he would pay us two thousand dollars cash and our expenses, and he would see that we got a job. We tried to organize the Plant factory and got something like three hundred members. Mr. Wilson

also wanted us to furnish him all the information we could about the Plant factory. We made reports two or three times a week about the conditions in the Plant factory. We used to tell him we got so many members. We had to report about so many pairs of shoes coming out from certain machines. We had to report that most of the times, too. He says: "Go ahead, keep up," he always told us to keep up organizing; do our best to get an organization in there. He says: "It will be better for you by and by." He said he wanted to find out something about the toe-operating Wonder working machine. We got a man who used to work on the machine in Plant's factory to come down and explain it. There was no attempt to strike, only to form an organization. We saw Mr. Wilson two or three times a week for two months. We got a man named Jack Tobin to go down and explain the toe-operating machine. I used to ask the boys working on the machines for the information Mr. Wilson wanted. As to whether Mr. Wilson said anything to us about infringement of patents, anything like that—well, he used to ask me lots of things I didn't know anything about, machines I didn't know anything about, so I used to ask the boys that was working on them to get information for him.

405 Cross-examination:

I first saw Mr. Wilson in May, 1910. Before I saw him at all I and some of the other employees of Mr. Plant had made some demand on Mr. Plant. We had a little trouble between us, but I was sure that would be fixed up. Mr. Plant promised us—when I say "we" I mean all his employees. I was one on the committee that represented them in making it. I was on a committee of the men with Harris, Murphy, and Epstein, to ask for more money. I was in Plant's office once before seeing Mr. Wilson. I saw Mr. McGaffee. I saw Mr. Wilson a day or two before the time we had given Plant was up. I told Mr. Wilson what the trouble was, that I was on the committee, and we were asking for more money and expected to hear from Plant. Mr. Plant gave us more money, on the last day. That was all that happened.

I heard there were about five thousand employed in the Plant factory—not all men. There were three or four hundred in the lasting department where I worked. I was acting only for them. We had several meetings of 15 or 20 or 50 men. As to what organization we formed, first we were for joining the United Shoe Workers, but after we thought we would be employees of Plant. We did not join the United Shoe Workers. We did not join any order at all nor did any of the men that I know of.

Q. Have you got the books or the papers in which the names were signed?
A. Mr. Wilson got all our papers.
Q. I say, have you got them?
A. We had some copies. Our lawyer had them, I suppose.
Q. Had that organization any name?
A. No; Plant's employees.
Q. Did you receive any money from Mr. Wilson?
A. I was there so many times——
Q. Did you receive any money from Mr. Wilson?
A. No; we didn't.
Q. Not one copper?
A. Not one copper.
Q. Have you got a scrap of paper from Mr. Wilson of writing of any kind?

406 A. No.
Q. To substantiate the truth of a word you say?
A. No.

407 JUNE 13, 1913.

CHARLES G. ROSS, witness for the United States.

My name is Charles G. Ross. I live at 43 Dana Street, Revere. I am a shoe worker at Lynn. I had a conference in June, 1910, with Mr. Charles H. Wilson; Mr. Morrison asked me to go. We discussed organization of the workers in the Plant factory. Mr. Morrison and Mr. Sochat were present. Mr. Wilson said through organization we could get better pay and he wanted us to organize the place and he would pay us well. He said he would pay expenses and two thousand dollars, and he wanted daily reports of shoes put out, their quality, and who was coming in to see the machines. We saw him about twice a week for two months. He wanted information about the toe-lasting machine. We got a man who worked on that machine at Plant's and took him down to Lynn and he compared Plant's machine to the United machine. He used a No. 5 machine belonging to the United Company in explaining the difference. There were present Richards, who is, as I understand it, assistant manager of the Lynn branch of the United Company, Raymond, a gentleman by the name of Mose, his first name, Sochat, myself, and Tobin. Mr. Wilson told us to see Mr. Richards at Lynn. Mr. Richards made out a check in my name for three dollars, and we cashed it and I gave the money to Tobin. We held meetings to organize and gave the boys a good time, which cost us about fifteen hundred dollars, all told. Mr. Wilson said we were not doing as good as he expected. He promised us jobs at welting, and said he would teach us how to welt at Lynn. As a result, I went to the Arnold school for a few weeks. I did not pay any-

thing for my instruction. In July, 1910, Mr. Richards got me a position in the Field, Holmes Company, in Chelsea. I asked Mr. Wilson for the expenses and money he had promised us for organizing at the Plant factory, and he said he would pay us in time.

408 Cross-examination:

We have never been paid anything, and Morrison, Sochat, and I brought suit against Mr. Wilson's estate for two thousand dollars apiece, or twenty-seven hundred dollars, including expenses. Morrison and Sochat are married. I am not. We average $15 a week at Plant's. We spent this $1,500 in June and July of 1910. We had meetings and took the boys to Revere. We spent about fifteen hundred dollars. I contributed about six hundred dollars of it. I had been saving it, and my father kept it for me. Morrison claims he spent $500 and Sochat supplied $400.

Q. You took $600 out of your own savings, did you?

A. Yes.

Q. And spent it for this purpose?

A. Yes, sir.

Q. When you did that, how many times had you seen Mr. Wilson?

A. About two times a week.

Q. Before you began to draw on your own savings?

A. Before?

Q. Yes. You had seen him once, had you?

A. I saw him once.

Q. Did you get anything in writing from him?

A. No.

Q. Did you ever see the man before?

A. No, sir.

Q. Didn't have a scrap of paper to show you would ever get this money paid back, did you?

A. We asked for it.

Q. No. You didn't have a scrap of paper, did you?

A. No.

Q. And was this $600 the savings of your lifetime, all that you had ever saved up?

A. I had a little more.

Q. How many years' work did it represent?

A. About eleven or twelve.

Q. And you undertake to say that on the statement of a man you had never seen but once, and without a scrap of paper, you took the savings of almost eleven years and spent them, expecting him to pay it back?

A. It wasn't done the first time; I took part of it the first time and the second time I took it again.

Q. You took your savings and spent them for this purpose?

A. During those two months; yes.

Q. And you never did get, and you haven't to this day got, anything in the way of a letter or receipt or any paper of any kind showing that you are ever going to get that money back?

A. No.

409 I have made a claim on Mr. Farr for the money. I had left Plant's when I made the arrangement with Wilson. Wilson wanted some one who had worked for Plant whom he could trust. The subject of organization was discussed by us with Wilson all through July. He said, "Go ahead and get the boys to join your union." We intended to get a bigger body before we made our organization. We had an unnamed union comprising Plant's whole shop. I got some of the names but have destroyed them. When we gave Mr. Wilson our bill he asked us to destroy all names relative to the trouble. We trusted Mr. Wilson, and we did so; destroyed the proof of all we had done.

Direct examination resumed:

We have made frequent demands on the United Company for payment and have brought suit against them.

410 JUNE 13, 1913.

ABRAM SOCHAT, witness for the United States.

My name is Abram Sochat. I live at 646 Harrison Avenue, Boston. I worked for the Thomas G. Plant Company in 1910. In June, 1910, I went with Mr. Morrison and Mr. Ross to see Mr. Wilson. He asked us how things were going on in the Plant Company, if the people were satisfied with the machinery and the pay they were getting, and said he wanted us to organize a union at Plant's after we had told him we weren't getting enough money. He told us to go on and organize and he would pay expenses and $1,000.00. He said he wanted information about the number of shoes put out and the quality, and as to who were coming to see the machines. We talked to Mr. Wilson about the toe-lasting machine. I tried to explain to him and he couldn't very well understand me, and he told me I should go down and see Mr. Richards—me and Mr. Ross should go down and see Mr. Richards in Lynn. I went with Mr. Tobin when he explained the difference between the Number Five and Plant's toe-lasting machine. Tobin got three dollars for it, which Mr. Richards paid him. We had meetings to organize a union. We went around and asked the boys to join.

I saw Mr. Wilson two or three times a week for the two months of June and July, 1910. Mr. Wilson sent us to a school in West Lynn to learn welting. I have demanded our money from Mr. Wilson many times, and have now brought suit.

Cross-examination:

I brought suit against Wilson's estate and against the United Company, on the same claim—$2,000.00 for services and $400.00 for expenses. I am a laster and make eighteen or less, or twenty dollars a week. I was married and had one child at that time. The four hundred dollars I spent represented my savings, but I didn't draw it from my bank account. My brother owed me two hundred dollars and I had two hundred dollars of my wife's in the house. She had kept it there quite a long time. She saved it up from her own money—what I used to give her in the house. It was all her savings and I took all of it. We spent the money for organization halls and to give the boys a good time, and some for our own expenses. We got receipts at the time. They are not in existence now. When we gave Mr. Wilson the bill, he told us to destroy the things we
411 had left. The only receipts we had were for halls. There was nothing about the receipts that would incriminate us. We hired a house from an Armenian. It was on Parker Street. I do not know the owner's name or the number. It was right near Center Street. We gave the boys a good time. We took them ' Revere. We had meetings with supper and and refreshments. I went with Ross to see Wilson at Morrison's suggestion. He just told us to go up and see Wilson and that he would explain. Mr. Wilson never paid me anything, nor did anyone else. We kept an itemized statement of what we spent. When we gave Mr. Wilson a bill for the whole thing, we destroyed it. It was the only evidence we had to support our claim. I saw Mr. Wilson at his office on Lincoln Street. I don't remember the number. His office was on the second floor. I was there fifteen or twenty times, perhaps more, sometimes with Ross and sometimes alone. Sometimes we would have to wait for him. J. Tobin is in Canada now, I have heard. I I don't remember his address in Boston or when he went away.

412 Counsel for the United States read the following note from the minutes of the executive committee of the board of directors of the United Shoe Machinery Company for January 29, 1900:

"That a rebate be granted to exclusive users of the machines leased or controlled by this company and its subsidiary com-

panies, and to such other manufacturers upon such special terms as the general manager may consider expedient; said rebate to be made by quarterly payments to the manufacturers of the amounts equal to the sums paid by them respectively as royalty on the Gem flexible insole machines during the quarter for which the rebate is made."

Counsel also offered the record in the case of the United Shoe Machinery Company v. Thomas G. Plant Company in the Supreme Judicial Court of Massachusetts. It is marked "Plaintiff's Exhibit 162."

413 JUNE 25, 1913.

CHARLES S. SMITH, witness for the United States.

My name is Charles S. Smith. I am in the butter business in Chicago. I was agent of the Goodyear Shoe Machinery Company from 1884 to 1898; on the road selling machines, with headquarters at Brockton. I placed welt-sewing, stitching, and lasting machines. The Eppler Welt Machine Company started in 1893 with the Eppler welt machine. They had no outsole stitcher at that time. Later—I should say in 1895; 1894 or 1895—they had an outsole stitching machine. I am familiar with the Eppler machine. They could be used for the same purpose as the Goodyear welt-sewing machines, and were so used.

I was putting out the Copeland and Ideal lasting machines for the Goodyear Company. They were put out on two forms—one on an initial price and royalty basis and the other on a sale form. In 1897 there were on the market the different Copeland machines put out by the Goodyear Company, the Chase, the Consolidated, the Boston, and the McKay-Copeland. I left the Goodyear Company before the formation of the United Company. Later in 1901 I entered the employ of the United Company at Brockton as a salesman on the road. I did not place any lasting machines for the United Company, nor any Eppler welt or outsole stitching machines. I had no instructions from the United Company with respect to placing any of those machines among manufacturers. Goodyear welt-sewing and outsole stitching machines were put out on an initial premium, and a royalty of four cents per pair of shoes made on them. I left the United Company in 1903, and re-entered their employ in 1904, and finally resigned in 1907.

414 Cross-examination:

I live at LaGrange, forty miles west of Chicago. I sewed shoes on the Eppler machine as an expert operator. I had worked in a shoe factory and had learned the trade; and as

a part of my work as agent for the Goodyear Company I had to be able to demonstrate a machine. I am familiar with the difference in the operation of the Eppler and Goodyear welters. The stitch was reversed in the Eppler. The Eppler laid the chain stitch in the channel of the insole, which comes next to the foot. The chain stitch, being larger and more bulky than the single stitch, occupied more room and was likely to leave a ridge around the inside of the shoe, which would come against the foot.

Q. And cause discomfort to the wearer; isn't that true?

A. That was the theory that we used in argument.

Q. You were constantly urging upon customers, before the United Company was formed, that the Goodyear welter was a superior machine to the Eppler, for that very reason, weren't you?

A. We were.

Q. And you believed it?

A. Yes, sir.

Q. And you believe it now?

A. I surely do.

Q. And you satisfied a great many customers of the truth of your belief, didn't you?

A. They didn't appear to be at that time.

Q. You satisfied a good many, at any rate?

A. Yes.

Q. Before the United was formed, as you watched the business, the Goodyear machine, because of this very difference, was gradually showing its superiority to the Eppler in the trade, wasn't it?

A. It rather looked to us as if we were in trouble.

Q. Just notice my question; it looked as if the Goodyear was gradually showing its superiority in the trade?

A. I can't say that it was.

Q. You can't say one way or the other?

A. No, sir.

415 The Goodyear machines were put out on lease only. They were never sold. There were two leases for the Ideal; one was on an initial premium of $500.00 where a payment was made when it was installed, and no further payment was made, but the machine remained the property of the Goodyear Company. That is the form I spoke of as a sale. Then there was the other form, where it was put out on a royalty basis and also remained the property of the company. Those were the only two forms I had when I was in office by which the Ideal was placed with customers. The second time I was with

the United Company I was in the general department and the third time in the eyelet department. Consequently there wasn't any occasion for me to receive any instructions as to any except general department machines.

416 JUNE 25, 1913.

HERBERT E. CHASE, witness for the United States.

My name is Herbert E. Chase. I am a shoe manufacturer and live in Haverhill, Mass. I make turns, stitchdowns, and McKay shoes. I had two channeling machines and a turn stitcher from the Haverhill Shoe Machinery Company. They were all on royalty. I got the stitcher in 1911 and the channelers a year before that. I had, in 1911, machinery leased from the United Company. I discontinued the use of the Haverhill machines about 1912.

(The United States here offers to prove by this witness that in 1911, prior to the filing of the Government's petition, he had obtained from the Haverhill Shoe Machinery Company one turn sewing machine and two channeling machines; that in March or April, 1912, an infringement suit was brought against Chase by the United Xpedite Company, a subsidiary of the United Company, on account of the use of the Apex heel-burnishing machine; that subsequently to the filing of the infringement suit the witness had conferences with Mr. E. P. Brown, Mr. Donham, and Mr. Sampson, of the United Company, at which objections were made to his use of the Haverhill machines in connection with the machinery of the United Company, and that, as a result, an agreement was entered into between the witness and the representatives of the United Company whereby the Haverhill machines which were then in his factory on lease were returned to the lessor. The evidence was excluded.

PUTNAM, J. As far as the court understands, the whole transaction was subsequent to the filing of this bill.)

I make a stitched down shoe now. I have only the United Company's stitching machines now. We last by hand. We use the United Company's slugger and we are still using the Apex burnishing machine.

No cross-examination.

417 JUNE 25, 1913.

WILLIAM G. DODGE, witness for the United States.

My name is William G. Dodge. I live in Newburyport. I am a shoe manufacturer. I have used the Haverhill Shoe Machinery Company machines. I am now using the United machines. I got the Haverhill machines in October or November, 1911, but I have not got them now. I had them on a

royalty basis. I also had on lease a full line of turn machines from the United Company at that time. I discontinued the use of the Haverhill machines after three or four months because the United Company installed some machines that we felt were more efficient. Mr. John H. Connor of the United Company came to our factory and asked us why we were using the Haverhill machines, and we told him we were using them until we could get the new model G, which we had ordered from the United Company. I don't remember that he made any objection to our using the Haverhill machines.

Cross-examination:

We had been making turn shoes for about four years and always had used United Company machines. It was while we were waiting for the new model G machine of the United Company that we tried some Haverhill machines. There was some delay about getting it because the United Company was not able to furnish those machines. We did not get any leases of the Haverhill machines, nor did we purchase them. We made no permanent arrangement regarding them, but simply took them on a verbal agreement for royalties while using them, with no agreement as to how long we would use them and intending to use them merely until we could get the model G As soon as the model G was ready we installed it and discontinued the use of the Haverhill machines.

418 JUNE 25, 1913.

FREDERICK W. HERRICK, witness for the United States.

My name is Frederick W. Herrick. I am engaged in the manufacturing of welt and turn shoes at Lynn under the name of G. W. Herrick Shoe Company. I use the machinery of the United Company. In April, 1911, I bought a heeling machine of the Haverhill Shoe Machinery Company and used it for about a year. We then ceased using it. I was using the Gem insole machine in connection with the United welter at that time. We had had the Gem royalty allowed, rebated to us all along. Every few months when everything was square on the books they sent us a check back. We paid it once and then it was sent back.

Q. Now, after you took on the Haverhill nailing machine, did the United Company discontinue sending you these so-called rebates for the Gem sewing machine?

A. Not for that reason.

Q. Now, I asked you whether or not they discontinued the payment of the rebate for the use of the Gem insole machine. Just answer that yes or no.

A. I was trying to think of the date; I couldn't say for certain.

Q. Did you have any conversation with any representative of the United Company about that rebate?

Mr. GREGG. That is, the rebate in connection with the Gem insole machine.

The WITNESS. Not that I remember of.

Q. Did you have any conversation with Mr. Brown about it?

A. I have had conversation with—I don't whether it was Mr. Brown, I wouldn't be sure. But when I have been settling bills the question has been brought up whether or not they would allow rebate when the account was not fully settled up to date—something of that kind—never in connection with anything else.

Q. Did you have any conversations with any representative of the United Company with respect to the use of the Haverhill machine?

A. I think I have; yes.

Q. With whom?

A. Well, the particular conversation I have had was with Mr. Richards, of Lynn.

419 Q. Did you have any talk with any other representative of the United Company?

A. Not that I can remember—no special talk.

Q. Here in Boston, I mean.

A. I don't remember; no.

Q. Will you say that you did not?

A. I think I had in connection with money affairs—had some talk with Mr. Brown, the head of the company.

Q. That is, about the Haverhill machine?

A. Well, matters in general—all kinds——

Q. No. Answer my question, won't you, please? Did you have any conversation with Mr. Brown about the Haverhill machine?

A. I don't think I ever did. I had a talk with him about putting back his machine. I don't think about the Haverhill machine.

Q. Putting back what machine?

A. Putting back the machine that he had, to do the same work—model G.

Q. In place of the Haverhill machine?

A. I think so; yes.

Q. Now, when you had that conversation with him did you also talk about the Haverhill machine at that time?

A. I don't think there was much said about the Haverhill machine.

Q. No. I am asking you whether anything was said about the Haverhill machine?

A. I should say no. I can't remember about it.
Q. Was anything said at that time about your paying a royalty to the United Company on account of the use of the Haverhill machine?
A. Yes; we had to—when we——
Mr. CHOATE. What was said, please?
Q. Yes; what was said about it?
A. In this general talk we had was that when you put this—if we put the United Shoe machine back we would have to pay their royalty, because they had demanded it of everybody else.
Q. Pay their royalty for what time and on what machine?
A. The royalty on the same number of pair of shoes that we had paid on the Haverhill machine.
Q. On the Haverhill machine?
A. Yes.
Q. Did you pay that royalty?
A. We did; yes.
Q. Now, was this rebate discussed at that time—this Gem insole rebate?
A. I don't think so; no, sir.
Q. Will you say it was not?
A. I should say no.
Q. Were you putting in this additional machine of the United Company, this machine of the United Company, to replace the Haverhill machine? Was that to go in with the understanding that the Haverhill machine was to be put out?
A. We was to put it in and, if it was more satisfactory, we should keep it in and put the Haverhill machine out.
Q. And did you put the Haverhill machine out?
A. Well, we would take the choice, whether we would put it out or not, you know.
Q. I am asking you now whether you did put it out.
A. We did; yes.
Q. How much had you paid for the Haverhill machine?
A. We paid $350, the initial price, and royalty for the time being.

420 Cross-examination:

These machines were for doing welt work. Before we had the Haverhill machines we were doing our welt work on the United Company's machines. We were using the Goodyear welter and stitcher, and we were offered the use of the Gem insole machine without additional charge if we used it with the Goodyear machines. Later we bought the Haverhill heeler and took the Haverhill turn-stitching machine on trial. We got it in May or June and ran it a little less than a month.

We made no lease or initial payment on it. We never purchased it. We used it for the work which had previously been done by the United Company's machine. We kept the United Company's machine, also, idle or partly so, while trying the Haverhill. When we had an opportunity to get the new model G (heeling machine) from the United we tried that machine and decided to use it in place of the Haverhill machine. That is, we learned of the new model heeling machine, which was the latest thing out, and we put it in and tried it. We had the opportunity to choose between the two machines. Under the circumstances we took the United Company's heeling machine. We tried the Haverhill Company's stitching machine and then went back to our old Goodyear machines. We sent back the Haverhill heeling machine; they kept the three hundred and fifty dollars we had paid. The new model heeling machine was developed by the United Company to handle women's shoes with high heels, and it proved to be a good one. We were making high-heeled shoes. Up to within a year and a half ago there was no machine on the market to make high-heeled shoes right. The model G was developed to do that work right. We got it because we wanted a machine to do that work right.

421 JUNE 25, 1913.

RICHARD N. MORTON, witness for the United States.

My name is Richard N. Morton. I am auditor of the United Shoe Machinery Company and of the United Shoe Machinery Corporation. The capital of the United Shoe Machinery Corporation is fifty million dollars. It was organized in 1905, and acquired substantially all of the capital stock of the United Shoe Machinery Company of New Jersey. The common stock was taken over at thirty-seven dollars and fifty cents, and the preferred share for share, or one and one-half shares of common given for a share of common of the company, and one share of preferred for one share of preferred. Thirty-seven and one-half cents in cash additional was paid for the preferred and seventy-five cents additional for the common. At the time of the organization of the United Shoe Machinery Corporation the issued capital of the United Shoe Machinery Company was $9,937,084.50 preferred and $10,720,809.50 common. The statement in the petition that after the stock of the company had been taken over the issued capital stock of the corporation was $26,018,298.75 is substantially correct. But that wasn't all issued at once. Dividends of eight per cent on the common stock and six per cent on the preferred stock were paid by the United Shoe Machinery Company between 1899 and 1905. All

were cash dividends. Cash dividends of eight per cent on the common stock and six per cent on the preferred were paid by the United Shoe Machinery Corporation from 1905 to 1911, amounting to $14,535,390.96, during the period. Stock was distributed to the stockholders to the amount of $9,166,846.25. The surplus of the United Shoe Machinery Company in 1905 was approximately $6,710,914.00 and on March 1, 1911, $20,669,800.00, and at the same time, March 1, 1911, the surplus of the United Shoe Machinery Corporation was $5,787,596.00.

422 Cross-examination:

I have a memorandum of the details of the figures I have just testified to, and the stock issued in 1907, 1909, and 1910:

(Detailed figures of the totals testified to by the witness are marked "Defendants' Exhibit 95.")

The thirty-seven and a half cents and the seventy-five cents mentioned as having been paid in connection with the acquisition of the company's stock by the corporation were adjustments to pay the stockholders of the United Shoe Machinery Company dividends that had accrued and had not been paid. The actual transaction was an exchange of preferred stock, share for share, and of common stock, one and one-half shares of corporation stock for each company share. The common stock of the company was carried on the books of the corporation at thirty-seven dollars and fifty cents a share to make the assets balance the capital liability. The par value of the shares of each company and each kind of stock was twenty-five dollars. The first issue of new corporation stock after 1905 was July 1, 1907, when $4,464,468.75 common stock was issued and added to our capital liability. To balance that issue, the value of the common stock of the company held in the treasury of the corporation was marked up on the asset side of the trial balance. That was the whole of that transaction. $2,239,245 of common stock was the next issue. It was made in April, 1909. It also was added to the capital liability and the value of the company's common stock in our treasury was marked upon the asset side to at least that amount. $2,463,132.50 stock was issued in July, 1910, and the same bookkeeping process followed. The surpluses are a property surplus, of all kinds, a trial balance surplus, not a cash surplus. The surplus of the corporation is due to the fact that we have marked up the value of the company's stock which it has in its treasury, which is due in whole or in part to the surplus funds in the company's treasury. In the computation as to the earnings and surplus of the company on

pages 78 and 79 of the petition, the United States inadvertently has calculated twice the surplus of the companies, so that the total earnings for those 6 years have been about twenty-
423 eight millions instead of $45,314,261—$28,679,452, to be exact.

At the end of the company's fiscal year in 1905, the net assets of the company and corporation were $27,368,808, and the earnings on same in 1906 were 12.91 per cent thereof, and the cash dividend 4.91 per cent; in 1906, the assets were $29,716,596.38. the total earnings in 1907 were 14.02 per cent and dividends 6.49 per cent; in 1907 the assets were $33,103,684.44, earnings in 1908, 14.08 per cent, cash dividends 6.67 per cent; in 1908 the assets were $35,632,484.37 and the earnings in 1909 were 13.55 per cent and the rate per cent, cash dividends to net assets, was 6.70 per cent. March 1, 1909, net assets were $38,070,392, rate per cent of the total earnings to assets for 1910, 14.90, dividends as compared to net assets, 7.80 per cent; on March 1, 1910, net assets were $40,771,821, rate per cent of total earnings to net assets for 1911 was 14.25 per cent, rate per cent cash dividends to net assets paid that year, 9.04 per cent, which included in that year one extra cash dividend. The average rate for six years of earnings to net assets was 14.01 per cent and cash dividends 7.10 per cent.

Direct examination resumed:

After the corporation was formed it held substantially all of the stock of the United Shoe Machinery Company. A total of $14,535,390—not $16,700,000, as alleged in the petition—has been paid in cash dividends by the corporation and by the United Company to stockholders, of course not including the dividends paid by the United Company to the corporation. Between 1905 and 1911, $9,166,846 worth of stock of the United Shoe Machinery Corporation was distributed among shareholders of that company, pro rata, according to their holdings, without any payments by the distributees. The surplus of the corporation was in each case at least equal to the amount of stock issued. The company of course pays to the corporation dividends on its stock held by the latter. The corporation in turn pays it to the shareholders. Subsidiary companies whose stock is held by the company of course pay the company dividends like any other stockholder. The surplus of the United Shoe Machinery Com-
424 pany increased between 1905 and March 1, 1911, from $6,710,914 to $20,669,800, an increase of $13,958,886. The earnings in excess of the dividends paid during that period increased that much, so the surplus as shown shows that way. The dividends of the subsidiary companies paid on stocks held

by the United Company go into the general income account of that company and form part of its earnings from which its dividends to the corporation are paid. They are not in addition to the dividends already spoken of as paid on the company's stock.

When the corporation was organized the company had issued $9,937,084.50 of preferred stock and $10,720,809.50 of common. Since the formation of the corporation up to August 2, 1905, the corporation issued $16,006,387.50 of common stock and $8,971,175 of preferred stock in exchange for the common and preferred stock of that company. The corporation took over the company's stock from time to time. Practically all the common has gone over, but some of the preferred is still out. On March 1, 1901, $18,292,218 of the stock of the United Shoe Machinery Company had been issued. Between 1899 and May, 1905, stock of the company was sold for cash to the amount of $1,854,829.09. There has always been a surplus sufficient to take care of any additional stock distributed.

(At this point counsel for the United States read into the record an extract from the records of a meeting of the board of directors of the United Machinery Corporation, June 14, 1907, relative to a vote that new stock to the amount of $4,464,581.25, representing 178,583¼ shares of the authorized unissued common stock of the corporation, should be distributed as dividend pro rata among the holders of the common stock. Counsel also read into the record a similar resolution under date of March 10, 1909, referring to the issue of $2,239,580 of common stock, and a third resolution of June 10, 1910, relative to the issuing of $2,463,-618.87 of common stock.)

425 JUNE 25, 1913.

ERIC O. HALLBERG, witness for the United States.

My name is Eric O. Hallberg. I am with the Boot & Shoe Recorder Publishing Company, which publishes a magazine known as the "Boot & Shoe Recorder." I have been with them for two years. The volume before me contains the issues of that publication for October, November, December, 1898.

(At this point counsel for the United States offered an advertisement of the Eppler Welt Machine Company for the purpose of showing that in 1898 it was in existence and was advertising. It was agreed by counsel for defendants that the Eppler Company, the Consolidated & McKay Lasting Company, the Chase Lasting Machine Company, and the Goodyear Company were advertising in the Boot & Shoe Recorder in October, November, and December, 1898. The United States then offered the reports that

the Eppler Welt Machine Company made to the commissioner of corporations for the State of Massachusetts for the years 1896, 1897, and 1898, for the purpose of showing the financial strength of the company and the value of its assets. These reports were excluded and marked for identification "Plaintiff's Exhibits B, C, and D.")

426 JUNE 25, 1913.

CHARLES L. CLIFFORD, witness for the United States.

My name is Charles L. Clifford. I make turn shoes for manufacturers on contract. In 1910 I had a full line of machinery from the United Company for turn shoes. I put in a stitcher from the Haverhill Shoe Machinery Company.

(Offer by the United States to show that Clifford was required to pay royalty to the United Company on the shoes stitched on the Haverhill machine ruled out as cumulative.)

427 JUNE 25, 1913.

IRA J. WEBSTER, witness for the United States.

My name is Ira J. Webster. I live in Haverhill, Mass. I manufacture shoes. They are McKay sewed shoes. I have used the United Company's machinery exclusively about a year and have used their machines for about eighteen years. I had National nailers and had Pettingill heads put on them. About three or four years ago I bought outright a second Pettingill machine. I applied to the United Company for a pulling-over machine and a toe-capping machine. I was not making welt shoes then, and am not now. Just before adopting the United's machines I talked with Mr. Smith, of the Haverhill office of the United Company, and with Mr. Sampson, head of the general department of the United Company, relative to obtaining them. No objection was made to furnishing me with the machines. At that time the only royalty machines I had from the United Company were lasting machines. I asked Mr. Sampson and Mr. Smith if the United Company would let me have their toe-capping and pulling-over machines while I was using the Pettingill nailer, and they said they would not. And they said that the reason why they wouldn't was because they would sell me what they would call a wholesale lot at a cheaper price than they would a small lot or a portion of their machinery. They offered to install the machines and let me use the Pettingill nailer if I would pay an installation price in addition, I think, to the royalties. I don't remember what the installation price was, but I know it was to cost me more than it was if I used their entire machinery. I traded in the two Pettingill machines which I owned to the United Shoe Machinery Company for about a

thousand dollars, and I am now using their machinery exclusively.

Cross-examination:

Before I had my talk with Mr. Smith and Mr. Sampson I was using some United Company machines. I used the Pettingill nailer. I think I was not using any Haverhill machines except the Pettingill nailer. They offered me two alternatives;
428 they said they would furnish me with the toe capper and puller-over if I would pay an installation charge and a royalty on them, or they would furnish me a full line of machinery at wholesale rates, cheap. That is all there is about that transaction. I don't remember what the installation charge was.

429 JUNE 25, 1913.

FREDERICK J. STARK, witness for the United States.

My name is Frederick J. Stark. I was connected with the Eppler-Adams Sewing Machine Company about 1890. It made sewing machines which were shoe machinery, but I don't know what they were used for. I think that was all it made. Andrew Eppler, who established the Eppler Welt Company, was president. That company operated up to the time the United Company bought a majority of its stock from Eppler and his associates.

(The United States offered to prove that the United Company filed a bill in court asking for a receivership; a receiver was appointed, the property sold, and it was wound up, and what little property they had was bought in by the United Company. The evidence was excluded on the ground that the company in question was not named in the bill or the bill of particulars.)

430 JUNE 26, 1913.

THOMAS H. SHINN, witness for the United States.

My name is Thomas H. Shinn. I live in Reading, Pennsylvania. I am superintendent of the shoe factory of Curtis & Jones Company and have been superintendent for about twenty-seven or twenty-eight years.

At the present time Curtis & Jones have only one factory. It is in Reading. Up to eleven years ago they also had a factory in Hamburg, sixteen miles from Reading. They had that factory for a period of four or five years.

In the Hamburg factory we used a miscellaneous lot of machinery—a sewing machine called the Lincoln machine made by the Campbell Sewing Machine Company, Pawtucket, Rhode Island. We used there loose nailing machines of the United Company—possibly some of their eyeletting machines, the

leased machines. We did not use any sewing machinery supplied by the United Company at that plant. We did not use any Duplessis machines at either factory at that time.

In July, 1902, we combined the Hamburg and Reading plants, moving the machinery from the Hamburg factory to the Reading plant. We had been making in Hamburg a line of shoes similar to those which we made at Reading but a cheaper line of goods.

At the time of the consolidation we were using in the Reading plant a full line of turn machinery from the United Company. Up to that time we had used the Goodyear machine for doing all the sewing in the Reading factory.

About that time we bought three Duplessis turn sewing machines. And we also had, at that time, the five Lincoln machines. That was the machine made by the Campbell Company.

Q. When you moved into the new plant at Reading was this machinery mixed up in a way, or did you divide your factory and attempt to separate the factory?

A. For our own convenience in running the work we installed the factory that we moved from Hamburg as factory No. 2 in the Reading factory, and tried to run that work separately.

Q. Under the same roof?

A. Under the same roof and under same conditions in
431 which we formerly made it at Hamburg.

Q. Just describe briefly how you separated the Reading factory and what machines you used on each side of the factory, as it were?

A. The factory is built in a hollow square. On one side we run what we call the No. 2 factory, which was the Hamburg plant that we had moved from Hamburg. On the other side of the factory we ran our Reading factory, which we called No. 1. In the No. 2 factory we ran all of the Lincoln machines. In the Reading factory we started three Duplessis machines and some two or three Goodyear machines. My memory doesn't tell me exactly just the number, but two or three.

Q. Now, on the side of the factory where you manufactured the shoes that you formerly manufactured at the Hamburg plant did you have any Goodyear machines?

A. No more than what we had had formerly at Hamburg. We installed the Hamburg plant complete on the No. 2 side of the new factory.

Q. And at the Hamburg plant you had had from the United Company their metallic fastening machines?

A. Loose nailing machines—metallic machines; yes, sir.

Q. Was any objection made by any representative of the United Shoe Machinery Company to the use of the Lincoln

machines with the other machines that you had from the United Company during the time that you were operating at the Hamburg factory?

A. No, sir.

Q. Now, what, if any——

The WITNESS. Nothing more than persuasive powers, the calling to our attention of the merits of their own system, the Goodyear system, and trying to persuade us to dispose of the Campbell or Lincoln machines and trying to put in the Goodyear.

432 As to what objection was made after we bought that machinery to the Reading factory—after we had started the Reading factory and the Hamburg factory in Reading, we had been running, I should say, four or five weeks, and Mr. Clark, the Philadelphia district manager, called.

Q. Now, what did he say?

A. He said that we had broken our leases by starting the Duplessis machines in connection with the Goodyear machines; that if we would refer to our leases we would find that fact for ourselves. He further stated that they would withdraw——

PUTNAM, J. Get to the point as rapidly as you can, Mr. Gregg.

Q. Did he say anything about the continued use of the Lincoln machines?

A. Yes, sir. He said it was all one plant now. So long as we had run those machines in Hamburg it was a separate factory, but by moving to Reading and combining the two factories in one it was practically one factory, and what would hold good in the Reading factory would hold good as applied to our No. 2 factory.

Q. That is, you had the Reading factory divided into what you called No. 1 and No. 2?

A. In some departments; yes, sir.

Q. Now, did Colonel King say anything about the continued use of their machines provided you continued to use the independent machinery?

A. I couldn't tell you that. I don't think so. I think that the matter was settled when Colonel King appeared in the case.

Q. Well, let me understand you. Was anything said by Mr. Clark about removal of the United's machinery?

A. Yes, sir.

Q. What did he say about that?

A. He said that they would remove all of their leased machines unless we would discontinue the use of the independent machines.

Q. That included the Lincoln machines and Duplessis machines?

A. Yes, sir.

We did not make any arrangement with Mr. Clark. Then Col. King came to Reading and we made the final arrangements with him. The arrangements were that we would turn over to the United Company the independent machines, for which they would pay us cost price, whatever we had paid for the machinery, and replace them with the Goodyear machines. They did that.

At the time we gave up the use of the Lincoln and Duplessis machines, they were not doing as good work as the Goodyear machines. They answered our purpose for cheap work, and we desired to retain them.

If the United Company had withdrawn all its machines from our factory, we probably could have duplicated all of them except the loose nailers. Those we could not have duplicated.

433 Q. Now, did the fact that you gave up the use of the independent machinery and took on United machinery in place of it increase the cost of the manufacture of shoes in your factory?

(Objected to by defendants.)

A. I should say apparently it did.

Q. Did it, or did it not?

Mr. CHOATE. Does he know?

The WITNESS. It opens a pretty broad question. With the independent machines——

PUTNAM, J. One moment. Read the question.

(A previous question is read, as follows:)

"Q. Now, did the fact that you gave up the use of the independent machinery and took on United machinery in place of it increase the cost of the manufacture of shoes in your factory?"

PUTNAM, J. Now, say you can't answer, or don't know, or answer it.

Q. Do you know?

A. It increased the cost one-half cent per pair.

We are now using the United Company's machinery exclusively and have been since that time.

We are now making about 10,000 pairs a day, both welt and turn shoes. At that time the output was about five or six thousand. We were then making turn shoes only and were not using any welting machines.

434 Cross-examination:

I couldn't say that I personally conducted these negotiations of which I have testified. Possibly some part of the negotiations I conducted. Other parts were probably conducted by Mr. Jones. As to whether I mean that I am testifying both

as to what I did and to what he told me he did—I am testifying now from the facts as I know them. As to whether some of the facts I know at first hand and some of them I got from his telling them to me—I probably was present at all the negotiations. I can't remember back eleven years and tell you the exact details. I couldn't say that I don't know how much of my story is of my own knowledge and how much he told me. I am positive—I am willing to swear my story as I told it is absolutely correct. If I get it from anybody else I get it from being present at the negotiations. As to whether I have personal knowledge of such correspondence as was conducted, such papers as were signed—a great many of them; yes, sir.

When we changed over our Hamburg factory to Reading we already had a factory in Reading. We did not add to it; we built an entirely new building and abandoned our old one, and we moved out of both old factories into one new one, with the idea of centralizing our business in one factory, with one office, one manager, one executive head, running it as one factory for the purpose of economy in administration.

That factory happened to be built on four sides of a square, with the idea of getting all the light we could. There was no separation of one side from any other side, except by an imaginary line. It was all open right around the square.

As far as I can remember, we were using at Hamburg only one of the United Company's machines, the loose nailer. We might possibly have had some eyeleting machines. We were using any sewing machines we wanted to without any interference from the United Company. We were using them on the same shoes and had been doing so for some years.

I don't think we paid any initial premium when we
435 got the loose nailer. Our Goodyear machines were then located in the Reading factory.

When we consolidated in the new factory we arranged our machinery for the convenient and economical manufacture of shoes. The sewing and stitching machines were all on one floor, in the making room. The Goodyear and Duplessis machines were practically side by side. The Lincoln machines were on the same floor but on the reverse side of the building—on the other side of the hollow square building.

Q. But it was still the making room, wasn't it?

A. Yes, sir.

Q. The same room?

A. Yes, sir; same room.

When Mr. Clark came to us and said that using those machines together under those circumstances was in violation of our leases, I did not look at our leases.

I think the signatures to our leases which you show me are Mr. Jones's. They are the firm's duly authorized signatures Up to that time, I think, whatever turn machinery we had we had from the old Goodyear Company and whatever agreements we had were agreements made with that company. Whether we had any additional machines or not, I couldn't say. The leases numbered 1808 and 4152, dated June 3, 1892, and October 16, 1897, from the Goodyear Company, both leases of turn machines, were the leases of the Goodyear turn machines which we had when this question arose.

(Lease No. 1808, turn set, dated June 3, 1892, between the Goodyear Shoe Machinery Company and Curtis, Jones & Company, is identified by the witness and is marked "Defendants' Exhibit 96."

Lease No. 4152, between the Goodyear Shoe Machinery Company, and Curtis, Jones & Company, is also identified and is marked "Defendants' Exhibit 97.")

436 Q. I call your attention to this signature on this rider attached to the first page, and ask you if that is Mr. Jones' signature.

A. Yes, sir, it is.

Q. Under date of October 7, 1897?

A. That is right.

Q. At which time Curtis, Jones & Company made this agreement, didn't it?

"Lease No. 4152 (1808), turn set, made between the Goodyear Shoe Machinery Company as lessor, and Curtis, Jones & Co., of Reading, Pa., as lessee, dated October 16, 1897 (June 3, 1892), is hereby amended as follows:

"The lessor hereby agrees that the rent and royalty to be paid by the lessee for children's turned shoes made after January 1, 1897, shall be 1 cent per pair instead of two cents per pair, as provided in the schedule of section third of said lease, on condition, however, that the lessee while he retains possession of any machine leased to him by the lessor shall not without the consent in writing of the lessor use or allow to be used in his factory any sewing machine for uniting the soles of turned shoes to their uppers which is not leased to him by the lessor.

"Executed in duplicate October 7, 1897.

"GOODYEAR SHOE MACHINERY COMPANY,

"By GEO. W. RANDALL, *Treasurer.*

"CURTIS, JONES & CO."

A. That is right.

Q. You had broken that, hadn't you, Mr. Shinn, when you had your talk with Mr. Clark?

A. When we consolidated?
Q. Yes.
A. Yes; we probably didn't take the leases into account at all.
Q. That is, had you been getting from the old Goodyear Company some arrangement which was advantageous to you?
A. Beg pardon.
Q. I say, had you been getting from the Goodyear Company in accordance with those leases some arrangement advantageous to you?
A. The same advantages as given to every other manufacturer.
Q. There had been some special rider attached to this lease in which you had agreed to use exclusively their machines in consideration for their doing something, hadn't you?
A. I suppose so, judging from that lease.
Q. And when you did introduce your Duplessis machines, that was in violation of your agreement, wasn't it?
A. That is right.
Q. Do you know of any reason why you shouldn't live up to your agreement?
A. I did live up to it finally.
Q. I know you did, but can you suggest any reason why you shouldn't live up to your agreement made back in 1897?
A. No, sir.
Q. Or whether it was any hardship for them to ask you to?
Mr. GREGG. If the court please, I don't see the purpose of this examination.
PUTNAM, J. It is cross-examination, Mr. Gregg.
Q. Can you suggest any reason why it was any hardship to ask you to live up to the agreement you had made in 1897?
A. That opens up a pretty broad field, does it not?
437 Q. You had made an agreement; I suppose you made it with your eyes open, and it was advantageous to you to get what you wanted then. Now, I say, is there any reason why you shouldn't live up to your agreement?
A. No, sir; I don't know of any.
Q. Now, then, was it those leases, as you understand it, that Mr. Clark had reference to when he said that you were violating your agreement, or the loose nailing lease?
A. I think Mr. Clark at that time referred to all the leases with the United Shoe Machinery Company.
Q. Did you make a change in the form of lease under which you held the loose nailer?
A. We endeavored to; yes, sir.
Q. Now, isn't this the fact, Mr. Shinn, that prior to 1902 you have held the loose nailer on the same terms under which

you were using it with any machinery of anybody else that you wanted to have out in your Hamburg factory?

A. We were under that impression; Reading, too.

Q. You learned, didn't you, in 1901, that the United Company was offering its metallic machines on a different form of lease, the terms of which had been agreed upon between it and the Shoe Manufacturers' Association?

A. That is right.

Q. And you wanted to change over to that new form of lease, didn't you?

A. That is right.

Q. And you wrote yourself, January 17th, 1902, asking to have your leases changed over to that new form, didn't you?

A. Modified lease; yes, sir.

Q. That is your letter [showing witness letter]?

A. That is right.

Q. And that was done of your own volition, wasn't it?

A. Yes, sir.

Q. Your own choice?

A. Yes, sir.

Q. Between the independent form of lease where you used the metallic machinery with anybody else's, and the other form of lease which you subsequently took, the modified form, as you call it?

A. I must enter into some little explanation to answer that question.

Q. Just answer my question. I say, it was a matter of your own volition, changing over?

A. Yes, sir; it was.

Q. You had considered the advantages of the two situations?

A. We supposed we had.

Q. Of your own accord you wrote that letter and asked to have your leases changed?

A. Yes, sir; that is right.

Mr. CHOATE. I offer this letter, if the court please, dated——

"READING, PA., *January 17, 1902.*

"*United Shoe Machinery Company, Albany Building, Boston, Mass.*

"GENTLEMEN: Please change all our leases to the modified lease as per arrangement made with manufacturers' committee some months ago, and oblige,

"Yours, truly,

"C. J. & Co.,

"Per SHINN."

The WITNESS. That is right.

(The above letter is marked "Defendants' Exhibit 98.")

438 THE WITNESS. We received in reply the letter, a copy of which you now produce.

(This letter is defendants' Exhibit 99.)

DEFENDANTS' EXHIBIT 99.

JAN. 23, 1902.

Messers. CURTIS, JONES & Co.

GENTLEMEN: Replying to your letter of Jan. 17, in which you ask us to change your leases of the metallic department to the independent lease, I will quote as follows from the rider which we agreed, upon request, to attach to the United form of lease which you now hold:

"The lessee, if not in default in any respect with any of the conditions, agreements, stipulations, and provisions in the lease No. — granted by the undersigned for certain metallic department machinery, upon giving at least thirty days' notice in writing of his intention so to do, shall have the privilege of surrendering this United lease and license at any time before February 1st, 1902, by executing the independent form of lease and license agreement in respect to the leased machinery."

You will see from this that the time for changing from the United to the independent form of lease has really passed, but we are willing that you should make the change now, if you desire to, and we enclose you herewith a copy of the independent form of lease for your signature.

Yours, truly,

UNITED SHOE MACHINERY COMPANY,

Asst. Gen. Mgr.

439 We adopted the form of lease which was enclosed with that letter. As to whether we have changed again to some other form of lease I couldn't say, but I don't think we are working under the same form that we changed to at that time. I am under the impression that we are not paying ten per cent more for our material that we use on the metallic machines at the present time. As to whether we must have changed over again at our request—I can't say about that. I don't know that we have changed.

Up to the time of consolidating the factories we did turn work entirely. Our capacity was about 5,000 pairs. We did not contemplate going into welt work when we enlarged our factory. We decided to do that about eight years later.

The Goodyear or United people had, by perfectly legitimate persuasion, urged upon us the advantages of their machines. We always listened to their arguments and always tried to keep up

with the improvements—keep informed. We had Goodyear machines working. We knew that they were doing good work.

We received no service with the Lincoln machines, but had to take care of them ourselves. We had very little trouble in getting parts. We had to send to Haverhill, Mass., for parts. The United Company had its depot for parts in our vicinity at Philadelphia, fifty-eight miles from Reading; reached easily by telephone or telegraph. We could get a part back the next day; possibly order in the morning and get it at night. That was pretty convenient and was a consideration with us. They also had skilled mechanics there at Philadelphia whom they would send out to us when we wanted them, on telephone request. We couldn't get anything of that sort for the Lincoln machines. We used to have United Company men come out to look at our machines whenever it was necessary. At times they instructed the operatives. I think that was a great convenience and I think I gave that consideration, yes, sir.

We only kept these Duplessis machines about six weeks—two months. We had tried one out formerly. We had
440 bought these two outright.

Q. Well, they didn't give you any service, did they?

A. Yes, sir; they did.

Q. You mean they had men there?

A. Oh, you mean——

Q. I mean service in the sense of having expert service.

A. No; they hadn't had any opportunity; we hadn't run them long enough to call——

Q. There wasn't any agency from which you could get anybody?

A. Not nearer than the east here—Boston.

Q. Where did you have to send to get parts?

A. At that time I think we would have to send to Canada. I am not sure whether they carried parts here in Boston or not.

Q. I presume you gave that consideration, too?

A. Later on.

Q. Now, you made comparisons, didn't you, between the products, the quality of the work which your factories were producing on the Goodyear machines and on the other machines?

A. We certainly did.

Q. And you became pretty well satisfied that the Goodyear machines were doing better work, didn't you?

A. I know they were.

And in addition the general arrangements with reference to the care, the supply of parts, the promptness of service, and all

that, were very much on the side of the Goodyear, in my personal opinion. I did not want to make the change but we felt we must for business reasons. Mr. Jones made the final decision for the change. I don't think Mr. Curtis had anything to do with it. As to where Mr. Jones is now, the last I heard of him I think he was in Nova Scotia.

I wanted the change in the lease of the loose nailers. I did not know that we could get Goodyear machines on an independent form of lease so that we could use the Duplessis machines side by side with them. I made no inquiry.

Q. As to whether there was any arrangement by which you could work them side by side, just as you were doing?

A. We were under the impression——

Q. No. I say, did you make any inquiry?

A. No, sir; I did not.

441 Q. To see whether you could work out the situation so that you could retain the independent machines and the Goodyear machines side by side?

A. No; we didn't make any inquiry.

Q. When you said, on your direct examination, that the change of machinery increased the cost of making shoes half a cent per pair, do you mean that that is an actual computation, or that that was the difference in royalty?

A. That was the difference in royalty.

Q. And in making that answer you haven't given any consideration, then, to the economies that might result?

A. No, sir.

Q. Have you computed those?

A. No, sir; but I know they amount to considerable.

Q. Or the improvement in the quality of work done—you haven't given any consideration to that?

A. No, sir.

Q. Well, economies that amount to considerable might easily amount to a half a cent a pair?

A. Well——

Q. And a considerable improvement in quality might equal half a cent a pair very easily, mightn't it?

A. On the class of shoes we were making, we felt the work was satisfactory we were getting from the independent machine.

Q. And at the same time you wanted to make your work more than satisfactory—you wanted to have it just as good as you could get it?

A. No; we didn't consider that at all. We thought it was good enough for the money we were getting for the shoes.

Q. Are you able to say candidly, balancing between the half a cent increase in royalty on the one side and the improvement in the work and the economies on the other, which way the scales tip?

A. My own personal opinion——

Q. I say, are you able to say candidly?

A. No; I couldn't say to a certainty. I can give you an opinion.

Q. You can't say one way or the other?

A. No, sir.

Q. Well, I will ask you for your opinion.

A. My opinion is that the United Shoe Machinery Company would be the cheapest.

Q. And why so?

A. Considering service, the trouble and worry that you would have with the other machines, the United Shoe Machinery Company would be the cheapest.

Q. Now, what do you mean by the trouble and worry that you would have with the other machines?

A. We had some trouble in keeping the machines in repair, because we had no experts to repair them; had trouble at times getting parts, and had some difference in the quality of the work.

442 Q. Anything else that occurs to you?

A. No; I think that would cover the ground.

Q. Well, you got no benefit of any improvements which might be made from time to time?

A. By using independent machines?

Q. Yes.

A. No, sir.

Q. Which you do get on the United Shoe Machinery Company's machines?

A. Yes, sir.

Q. And you get the benefit of any improvements as fast as they are made?

A. Yes, sir.

Q. One matter more I want to ask you about, Mr. Shinn. Do you remember, about the time you put in the metallic sewing machines, having some talk with the representative of the Goodyear Company?

A. Well, I can't think of any particular talk. We had a good many talks at that time.

Q. Let me see if I can call it to your mind. Those Lincoln machines were put in your Hamburg factory about 1895?

A. I can't remember the year.

Q. Somewhere about there?
A. Probably.
Q. At first you proposed to put one or more of those in the same factory with the Goodyear machines, didn't you?
A. Yes, sir.
Q. And the Goodyear representative objected to their being in the same factory?
A. That is right.
Q. On the ground that his machines might get blamed for any bad work that resulted?
A. Well——
Q. Just see if that isn't correct?
A. No. We started the first Lincoln machine we ever started in the Reading factory.
PUTNAM, J. You have answered the question, Mr. Shinn.
Q. Do you not recall that objection?
A. No, sir; not in that way.
Q. Didn't he ask you, for some reason which I will come to in a minute, to put the machines in separate factories, so that the results of the work of the two kinds of machines would be demonstrated?
A. I can't say. He might possibly have said it.
Q. And didn't he claim that if you put the Lincoln machines and the Goodyear machines side by side in the same factory that his machines, which he believed did the better work, might be blamed for the bad work of the Lincoln machines?
A. I never remember anything like that.
Q. Don't recall that?
A. No, sir.
Q. And didn't he at that time insist upon having the whole of your factory for his machines, or none?
A. Oh, yes. They always done everything they could to persuade us to discard the——
Q. Well, wasn't that their reason for it?
A. Well, they offered so many reasons I guess they covered that ground.

443 I am speaking all the time of the period before 1899, before we had our consolidated factory, and when we still had the two factories, one at Hamburg and one at Reading. I know that Mr. Clark, with whom I testified that I talked, is dead.

I am not positive whether when this trade was made by which we took the United Company's machines in place of the Duplessis we had notice that the Duplessis machines were infringing the Goodyear machines and that there was patent litigation

We knew of it later on, but I don't think we were aware of it at that time, although we may have been notified. Referring to the copy of the letter to which you called my attention, dated August 15, 1902, that was about the time we made the change. I can't remember whether it was pointed out to us in that letter that the Duplessis machine infringed the Goodyear patent. As to whether that wasn't one of the reasons that we made the change, it might have had some effect, if we received such a notice. Together with these advantages that I pointed out it certainly would have had some effect on us just at that time.

Direct examination resumed:

The arrangement to which we referred in our letter of January 17, 1902, was that which we understood to have been made with

444 the United Shoe Machinery Company by a committee of the Shoe Manufacturers' Association. I was not present at the conference, but I knew two members of the committee. We understood that the committee secured from the United Shoe Machinery Company a modified lease by which manufacturers using the metallic machines and paying an additional percentage for the material would be permitted to use any machine independently. On the strength of that we sent the notice referred to because we wanted to get into a position to use independent machines, and we told Mr. Clark when he raised his question in reference to our violating our leases that we were working under the modified lease which gave us the privilege of putting in any machine that we wanted. Mr. Clark said the modified leases didn't apply in this instance. The letter referred to all of the machines in both plants, and we were under the impression that all of our metallic machines were under the modified lease. I think that we got machines subject to the rider referred to in the letter written us by the United Shoe Machinery Company on January 23, 1902.

Cross-examination resumed:

The rider was put on the lease we then had. We did not get any new metallic machines. I have learned since—but we understood at that time—that the result of taking the modified form of lease was to permit us to use any independent machine, and that the arrangement related to the whole field, instead of to the machines in the metallic department. That is where we were found to have misunderstood it.

445 Q. I call you attention again to defendants' Exhibit 99, the reply of January 23d to your letter of January 17th, which says:

"Replying to your letter of January 17th, in which you ask us to change your leases of the metallic department to the Independent lease."

That made it very plain to you that the changes were in the metallic department lease, didn't it?

A. Exactly.

Q. And not generally?

A. But we understood——

Q. Now, just a minute. You couldn't have understood from that that it made any change in the contracts or leases you had with reference to your Goodyear machinery?

A. We certainly did understand that. Our understanding was that on changing this metallic lease——

Q. Then you didn't read the letter?

A. We probably didn't understand it, if we read it.

Q. The letter was plain, wasn't it, in which you asked us to change your leases of the metallic department?

A. That is right.

Direct examination resumed:

Q. Was it your understanding that that statement in the letter to change the leases of the metallic department was such a change as would permit you to use in connection with their metallic fastening machines other machines than metallic fastening machines, with the United machines?

A. To be perfectly frank with you, we possibly didn't pay much attention to that letter at all. We felt that that letter covered the ground that we had asked for.

446 JUNE 26, 1913.

FREDERICK W. CURTIS, witness for the United States.

My name is Frederick W. Curtis. I live in Reading, Pennsylvania. For about twenty-eight years I have manufactured boots and shoes. Formerly we had two factories, one at Reading and one at Hamburg, sixteen miles apart. We manufactured turn shoes. In the Reading factory we made our better goods and in the Hamburg factory we made a cheaper grade of the same kind of shoes. In the Hamburg factory we used the turn sewing machines called "Lincolns" made by the Campbell Machine Company. We used the United Company's metallic machines. We used independent machines that we bought and had for years. We combined the two factories in 1902. The two were then placed under one roof. We built a large factory and we moved to it the machinery that we had in the Hamburg factory and also placed in it the machinery that we formerly used at Reading. In the Reading factory we had been using the United Company's machines exclusively.

We moved the Hamburg plant down and we installed it in one side of this building, the same as we had at Hamburg. We moved

our factory at Reading into the new building at the same time and installed the same machinery we formerly used from the United Company, and also put in three different Duplessis machines, on the side where we had the Goodyear machines. None of the shoes manufactured on the side where we had the machinery moved from Hamburg were finished on the side where we used the Goodyear machinery. That was a cheaper grade of shoe. They were all made in one place.

Q. Now, during the time that you were using the United's machinery at the Hamburg plant, did you have from the United Company at that time what was known as a modified form of lease?

A. We never used any United Shoe Machinery Company's machinery at the Hamburg plant.

Q. Didn't you use some of their machines there?

A. No, sir. We possibly might have used a nailing machine or something of that sort. We had all the machines we owned long before.

Q. You say you may have had a nailing machine up there?

A. Yes, sir.

Q. Now, do you know whether or not your company did take from the United Shoe Machinery Company what was known as a modified form of lease?

A. Yes, sir.

Q. For what machines?

A. Well, I think it was for the nailing machine; loose nailing or nailing machine.

447 I do not think I ever saw the letter dated January 23, 1902, defendants' Exhibit 99. As to whether I ever saw this so-called modified form of lease, I never saw any leases; that is, to read them.

After we went to Reading we also took on three Duplessis turn sewing machines which I bought myself.

Q. Do you know of your own knowledge whether or not the United Shoe Machinery Company made any objection to the continued use of the Campbell or Lincoln machines?

A. Yes, sir.

Q. And the Duplessis machine?

A. Yes, sir.

Q. What information did you have about that?

A. They told us——

Q. No. Did they tell you in person?

A. No, sir.

Q. Now, did your partner, Mr. Jones, communicate with you about that matter in any way?

A. He certainly did.
Q. Where were you at that time?
A. I was here in Boston.
Q. What did you do in response to this communication from Mr. Jones?
A. I advised him——
Mr. CHOATE. No; I suppose you are going to say you talked with the United Company.
The WITNESS. I hadn't talked with anyone. I decided the question right here.
Q. Here in Boston?
A. Yes, sir. I am president of the company, and he left it to me.
Q. What matter did you decide here in Boston?
A. I decided whether we would keep on using our machines that we had, or whether we would put in the United Company's machines.
Q. That is, you mean the independent machinery?
A. Whether we would keep on using the machines.
Q. Whether you would keep on using the independent machines or put in the United's machines exclusively?
A. What?
Q. Or whether you would put in the United's machines exclusively?
A. Certainly.
Q. And what decision did you come to?
A. I came to the decision that we would put in all United.
Q. Did you act on the communication from Mr. Jones?
A. Yes, sir.
Mr. GREGG. Now, it seems to me he ought to be permitted to say what Mr. Jones advised him. It seems to me he ought to state what communication he received from his partner that he says he acted on in deciding upon the removal of these machines.
Mr. CHOATE. If that is competent, why not produce it?
Mr. GREGG. I don't suppose he has it.
448 Q. Do you have the communication you received from Mr. Jones?
A. We have it, but I haven't it here. We have a copy of it—a copy of all letters. I haven't it here.
Mr. CHOATE. I don't object to your using a copy if it is competent.
Q. You don't have a copy here?
A. No, sir.
Q. What was it—a telegram or a letter?

A. A letter; in fact I am not sure we have the letter. I am sure I got the letter, but I am not sure whether it was a typewritten letter or not.

Mr. GREGG. If the court please, I will put it in this way, then, and let him explain his reasons for coming to the decision to use the United's machines exclusively.

PUTNAM, J. That he may do.

Q. Explain your reason why you came to the decision to use the United's machines and discontinue the use of the independent machinery.

PUTNAM, J. That refers to facts.

The WITNESS. My partner said——

PUTNAM, J. No matter what your partner said—the facts, the conditions of your business or anything of that sort—the actual facts.

The WITNESS. I wouldn't know just what he wanted me to say or how he wanted me to put it. Just give me the question again.

Q. I am asking you why you came to the conclusion to use the United's machines exclusively and discontinue the use of the Duplessis machines?

A. We didn't want to fight the United Shoe Machinery Company.

Mr. CHOATE. That I submit is not an answer to your honor's suggestion. It is an argument. It is not any statement of facts at all. May that be stricken out?

PUTNAM, J. Well, it is not within the line of what I had in mind. I don't know how my brothers feel about it. I think he is entitled to state the facts and conditions.

Q. What were the conditions that induced you to come to that conclusion?

A. Well, the company told us that we could not under our lease use any machinery in the same building under our leases, and that they would take their machinery away if we kept on operating this way. When we bought those Duplessis machines in Canada—I bought them myself here in Boston—they claimed that they could give us a full line of machinery, and after we bought these machines at $1,500 apiece they couldn't furnish the machines such as the United——

PUTNAM, J. Whom do you mean by "they"—the Duplessis?

The WITNESS. Yes, sir. They claimed they had a full line of machinery made in Canada and could furnish a duplicate of every machine we were using. But when the time came and when we moved they couldn't furnish the machines. If we had thrown the United out, they could not furnish them.

Q. Did you know of any other concern from whom you could have obtained the machines that you then had from the United Company?

A. No other.

449 We sold back the Lincoln machines and the Duplessis machines to the United Company and got for them the original price. We got for the Duplessis $1,500 apiece, the same as we paid for them. The discontinuance of the use of the Duplessis and Lincoln machines increased the cost of manufacturing our shoes to the extent of the royalties that we were then paying, that is one-half a cent on each pair. We owned those machines and had them paid for and when we replaced the Duplessis and Lincoln machines with the United Company's machines we then paid one-half cent royalty on each pair of shoes.

The Duplessis and Lincoln machines were doing satisfactory work at that time and we certainly desired to continue their use. We have machine shops in connection with our shoe factory and it is possible for us to look after the machines we use in our factory and in case of necessity to make parts for them; but we wouldn't make parts if we could buy them. At the time we made the change we might have had ten machinists in our employ and they could have taken care of the machines in our factory. We are now using the United Company's machines exclusively—every machine we need we use from the company. Since we discontinued the use of the Duplessis and the Lincoln machines, we have not used any other independent machines to amount to anything; none of any account. I mean, we don't consider any others. There might be some minor machines that we use. We do not use any independent sewing or stitching, heeling, lasting, or metallic fastening machines.

450 Cross-examination:

Mr. Shinn is in charge of the manufacturing end of our business. I have charge of the selling end. I am in Boston quite a bit of my time; never traveled a day. I keep pretty well posted as to the manufacturing end, but Mr. Shinn has charge of all the details of the factory. When I said in my direct examination that we used the United Company machinery exclusively I was speaking only of the bottoming department. In the other departments we use other people's machinery.

Before we made our change and when we had our Hamburg factory we made the better grade of shoes in Reading. Both factories were turning out turn shoes, but the better grade of shoes were made at Reading and had been for years, on the Goodyear machines. As far back as my experience goes, we were

all the time making our better grade of shoes on the Goodyear machines. It was my business judgment to make my better grade of shoes on Goodyear machines.

When I said that the change increased the cost of making shoes, I meant aside from other considerations it added the royalty of half a cent a pair, but I did not take into consideration the benefit of the economies which might have resulted. I heard Mr. Shinn testify; I would not say that my conclusion is derived from his judgment about it. We paid $1,500 apiece for the Duplessis machines; bought three of them outright. We had $4,500 tied up in machinery that we could not use in the shoe business. We turn over our capital invested in making shoes about three times a year; whereas if we tie it up in machinery we do not turn it over at all; it is dead, and stays there always.

451 We have to keep the repair shops whether we retain machines which we bought or machines of the United Company or any other company. The Duplessis Company agreed to furnish parts for its machines. We could get them in Haverhill; they had an office there; that was the nearest place to us. We were the only people out of Massachusetts that had a Duplessis machine. It would take us longer to get those parts than to get Goodyear parts. I do not think the Duplessis Company furnished any mechanics to teach the operation of their machines or keep them efficient. They might possibly when they first installed them. When we first had one on trial I think they did send a man, though I am not sure. The question of repairing and furnishing parts is an important consideration to the shoe manufacturer. We want to keep the volume of product moving steadily through our factory without any interruption. If an important machine, like a stitcher or welt-sewing machine, breaks down it stops the flow of the product, keeps the machines behind it idle, dams up the product right there at that point, to the general disarrangement of our factory, as well as throwing men who are on machines behind the disabled one out of work.

The margin of profit in making shoes is such that it is very essential that our machinery should work smoothly, regularly, and with continuity, and economies in the manufacture of shoes often make the difference between a successful manufacturer and one who is not successful. One of the most important economies is to have our machinery working with continuity and with the highest efficiency and turning out our product with the utmost regularity day after day, just as we want to get it, so that there won't be any hitch anywhere in the flow of product through our factory.

452 Taking all things on both sides, I think I agree with Mr. Shinn that the operation of the Goodyear machines was on the whole more economical than the operation of the Duplessis, and on the whole the Goodyear machines did better work than the Duplessis machines.

I am pretty sure that our Hamburg factory was entirely equipped with machines not obtained of the United Company and that we did not have any machines but what we had had for years and paid for before the United Company started. We had machines on leases that the United Company took over. We thought possibly that all the machines we had there we owned; we thought we owned them. I do not know where we got our metallic machines before 1899, but my impression is that we had a factory completely equipped with machinery obtained from some other source than the United Company. We had machinery at Hamburg that we had owned for years and paid for. Our output there was about 200 dozen a day of turn shoes—2,400 pair a day. We make more turn shoes than any factory in the United States. It was one of the big factories of the day at that time.

Direct examination resumed:

The reason we put in the independent machines in the Hamburg plan was to save the royalty, at that time a cent a pair. The lease which you produce is one which I signed.

(Lease form 301 called "Independent form of lease," signed by Witness Curtis and referred to in defendants' Exhibit 99, is marked "Plaintiff's Exhibit 176.")

453 Cross-examination resumed:

We equipped our Hamburg factory with machinery from people other than the predecessors of the United Company because we did not want to pay royalty.

You called my attention to defendants' Exhibit 96, which is the lease from the old Goodyear Company, dated the third day of June, 1892. This lease might not ever have applied to Hamburg. I did not sign it. That is Mr. Jones' signature. I do not know whether we got our Lincoln machines after we made this lease. I think we did, but I am not sure. Mr. Shinn, I think, explained that to you. If we got them about 1895, that is so. We very rarely look at our leases. Perhaps I have got some mistaken impressions about it. I do not think there is anything about this lease that ties us in any way to use other Goodyear machines or take other Goodyear machines. In 1892 we were free to take any machines we wanted to. I do not know anything about defendants' Exhibit 97. Mr. Jones signed that.

Q. He was the bad partner apparently; he signed an agreement by which you did agree to use Goodyear machinery exclusively.

A. In what year?

Q. 1897 [showing agreement to the witness]. At a time when you were perfectly free to use anybody's machinery that you wanted to.

A. That only applied probably on the Reading factory.

Mr. Jones and I certainly agreed on our policy about machinery. We ran one factory in Hamburg that we owned before the United Company ever started. We ran one factory on one policy and the other on the other. That is what I meant by saying we wanted to have in the Hamburg factory machines on which we didn't pay royalty. In the Reading factory we were willing to pay royalty.

454 JUNE 26, 1913.

ISAAC W. GILES, witness for the United States.

My name is Isaac W. Giles. I live in New Bedford. I am a machinist and automobile man. I engaged in the eyelet business in 1868 with William H. Dunbar Company in South Abington, now Whitman. I was also with Dunbar & Rhodes, J. C. Rhodes Company. Prior to 1899, the Union, American, and Star concerns in Providence were manufacturing eyelets and there were the Waterbury Brass, Hartford and S. O. C., the latter located in Ansonia, Connecticut. I think the Rimmon Company was then in business, but I don't think the Springfield Fast Color Eyelet Company made eyelets, they only put a celluloid top on them. I think the Hughes Eyelet Company started in 1901. The Fast Color Eyelet Company was at Springfield. I was superintendent with J. C. Rhodes & Company until the company was taken over by the United Company. After that I was eight years with the Atlas Tack Company. In 1901, when I left Rhodes, the Hartford and Waterbury Brass, Plume, Booth, and Hayden, in Connecticut, were manufacturing eyelets, I think. When I left the Atlas in 1909 only the United and Atlas companies were in the field.

Cross-examination:

The Southington Eyelet Company, of Waterbury, Connecticut, was also engaged in the eyelet business in 1899. I can't say whether they were later. So was the Precision Eyelet Company, of Bridgewater, Massachusetts, but they were very small. I can't say whether they were in the field later or not. I do not know anything about the Excelsior Needle Company, of Tor-

rington, Connecticut, making eyelets. The Scoville Manufacturing Company was in business about a year. I don't know
455 whether they were in business in 1901. I have made no attempt to tabulate my knowledge or get it very accurate, either as to time or as to companies engaged in the business. There are doubtless many other companies which I do not call to mind. When I left the Atlas its output was four millions per day, about 100,000,000 a month. I know that it is not now as much as two billion a month. It has increased. The Hughes Eyelet Company, of Taunton, is putting out eyelets today. I don't know what its capacity is. I think it is not 20,000,000 a month. I do not know whether the Scoville Manufacturing Company is now engaged in business. I do not know whether the Waterbury Brass Company is still engaged in the eyelet business, or the American Ring Company (they made eyelets three years ago), or Rome Brass Works, or R. N. Bassett & Company, of Derby, Connecticut. I have not kept very familiar with the eyelet business outside of my immediate locality.

456 JUNE 26, 1913.

GEORGE E. KEITH, witness for the United States.

My name is George E. Keith. I have been a director of the United Shoe Machinery Company since its formation. I was president of the Eppler Welt Machine Company when it consolidated with the United Company and had been for several years.

Q. Mr. Keith, I wish you would state what consideration was paid the stockholders of the Eppler Welt Machine Company when it became united with or was taken over by the United Shoe Machinery Company.

A. I couldn't tell you exactly, because I was out of the State at the time the sale was made. I could tell you what I received myself.

Q. What amount of stock did you hold in the company?

A. I couldn't tell you the proportion. I have no records of that that I could turn to.

Q. Can't you give your best estimate of the proportion of stock that you held, Mr. Keith?

A. I couldn't at this time.

Q. What was the capital stock of the company?

A. I couldn't tell you that.

Q. Aren't there any records of the Eppler Welt Machine Company in existence?

A. I don't know of any. It may be they were turned over to the company that bought the company; I don't know, but I have no records myself.

Q. And haven't you any recollection as to the amount——
A. No, sir.
Q. That was paid for the properties of the Eppler Welt Machine Company?
A. No, sir; I have not. I have tried to think of it, but I could not.
Q. What did you receive yourself, Mr. Keith?
A. I received about $20,000.
Q. In cash?
A. Yes, sir.
Q. How many stockholders were there of your company?
A. I couldn't remember.
Q. And haven't you any knowledge as to the relative amount of stock that you held?
A. No, sir; I haven't.
Q. Were not the stockholders of that company made up principally of shoe manufacturers?
A. Perhaps the majority were; I should judge so.
Q. And you were president of the company for a number of years?
A. Yes.
Q. Mr. Keith, I show you what purports to be a certified copy of the report of the Eppler Welt Machine Company made to the commissioner of corporations of the State of Massachusetts for 1898, and which purports to have been sworn to by you. I wish you would look at that document and refresh your recollection, and state whether or not that states the fact with reference to the properties owned by that company at that time.

457 Mr. CHOATE. I have no objection to his stating whether it refreshes his recollection. As to the next question, I should like to be heard before it is asked.

A. I suppose I must have had knowledge of that. It is typewritten. My own signature does not appear.
Q. This is a certified copy. At that time you were president of the company?
A. Yes, sir.
Q. And on the board of directors?
A. Yes, sir.
Q. State whether or not it is your best recollection, Mr. Keith, that that is a correct copy of the assets owned by that company at that time.
A. I suppose it must have been. It must have been reported that way.
Mr. CHOATE. The question is as to your recollection.

Q. State whether or not, to the best of your knowledge and recollection, the capital stock of the company at that time was $579,990?

A. I have no recollection of it.

PUTNAM, J. Was he the president at that time?

Mr. FOWLER. He was president at that time.

PUTNAM, J. Did he purport to sign that paper?

FOWLER. Yes.

BROWN, J. What is the signature on it?

Mr. FOWLER. This is sworn to. The signature purports to be the signature—

PUTNAM, J. What is the date, Mr. Fowler?

Mr. FOWLER. It is March 30th, 1898.

PUTNAM, J. There are so many ways of verifying the correctness of that paper, that I should say it is fair for him to refresh his recollection about it, if he can.

BROWN, J. What is the signature?

Mr. FOWLER. The signature purports to be: "George E. Keith, president, Eppler Welt Machine Company; Walter S. Batchelder, acting treasurer; W. H. Stacy; Andrew Eppler; W. F. Halsall; George Strong and Charles Curtis."

PUTNAM, J. Did you ask him to refresh his recollection from that, Mr. Fowler?

Mr. FOWLER. I did, your honor, and Mr. Keith apparently has no independent recollection.

Mr. PUTNAM, J. That is not required. You can ask him if that refreshes his recollection.

Q. It is a fact, Mr. Keith, that you and the other directors of the company made a report to the commissioner of corporations?

A. Yes, sir.

PUTNAM, J. He said that. Pass the paper to him and ask him if it refreshes his recollection.

Q. Please examine the paper and state whether or not to the best of your recollection that is a copy of the paper that you actually prepared.

Mr. CHOATE. The court suggests that you ask if that refreshes his recollection.

PUTNAM, J. That is all. Let him look at it and see if it refreshes his recollection—if he can't testify without the aid of it.

A. I don't recollect anything on it.

458 Q. Does or not that refresh your recollection to the extent that you can testify that you made a report which purported to contain in substance the assets and liabilities of the concern at that time—whether you did that or not?

A. The company certainly did this. The company certainly made this report.

Q. And you were president of the company?

A. Yes.

Mr. FOWLER. Your honors, I will offer this as a Government's exhibit.

PUTNAM, J. I don't suppose it is admissible. We ought not to be detained here with it. He says he don't know anything about it.

Mr. FOWLER. May it please the Court, the statutes of Massachusetts, as I understood, require this report to be made, and Mr. Keith was president and director of the company, and under the statute was required to make this report.

PUTNAM, J. If he was dead or out of the State—lived out of the State—it might be admissible, but we ought not to be troubled with it.

Mr. FOWLER. We are placed in this peculiar attitude about the Eppler Company: We can't find anyone that professes to know anything about the amount of capital stock and how much was paid. The bill doesn't allege.

PUTNAM, J. He testified he got $20,000.

Mr. FOWLER. Mr. Keith says he doesn't know how much stock he owned. What I want to do, your Honor, and what I am specially concerned in, is to show the amount of the holdings and the value of the properties owned by that company, to show the importance of it at that time.

PUTNAM, J. I don't think you can show it this way.

BROWN, J. You have got the material for presenting the matter in a different light from what it was presented yesterday, but you haven't yet done so.

PUTNAM, J. Let me see that paper.

Mr. FOWLER. I will ask him some more questions along that line.

PUTNAM, J. Mr. Fowler, perhaps you will find some decision in Massachusetts that will make that paper admissible. Are these directors all dead? There are six or seven men here. Are they all dead?

The WITNESS. Mr. Stacy lives in Braintree; Mr. Strong lives in Newton. Two or three of them are dead; some of them have gone outside.

Mr. FOWLER. Your honors, I wish to offer that paper.

PUTNAM, J. Have you any decision that makes it admissible?

Mr. FOWLER. I haven't examined, your honor, and I don't know.

PUTNAM, J. The offer is ruled out, exception saved.

Mr. FOWLER. It has already been marked for identification.

PUTNAM, J. Let the stenographer note the marking, so that it may be identified.

[This document referred is plaintiff's Exhibit D for identification.]

459 The WITNESS. The Eppler Company made welters and stitchers as its principal machines and was receiving royalty on between thirty and forty welters, of which one-third were in my factory. There were not as many stitchers out as welters. They had been on the market for several years, and we were making efforts to install them in factories. The welter was first put out in 1892 and the stitcher in 1894 or 1895. At the time we joined the United Company we were also trying to make a rough rounder and stitch separator.

Q. Did you, or not, manufacture and place upon the market a full set of machinery for making welt shoes?

A. No, sir; we never did.

Q. What machine did you lack?

A. We never perfected the rough rounder; that is, it was not a satisfactory machine.

Q. But you were making a rough rounder?

A. We were trying to.

Q. You hadn't yet perfected it?

A. No, sir.

Q. But were trying to perfect it?

A. Yes. We had four or five agents out. Other companies besides ours and the Goodyear Company were making stitchers. No others that I know of were making welters.

Q. Do you think you owned as much as one-tenth of the stock?

A. That would be a guess on my part.

Q. You don't think you owned a fifth, but you won't say as to a tenth?

A. No. I am not clear in my own mind, so I wouldn't want to make a positive statement.

Q. Mr. Keith, you said that you received $20,000 in cash. Did you get any stock in the United Shoe Machinery Company?

A. No, sir.

Q. Nothing in addition to the $20,000?

A. Nothing.

Q. Mr. Keith, I call your attention especially to one item in this document, which purports to be a copy of the report which you made, and ask you whether or not it will refresh your recollection, and that is an item of machines in factories, $287,010.90.

State whether or not to the best of your recollection that is a correct statement of the value of the machines in your factory.

460 A. I couldn't state that fact.

Q. You won't say whether it is correct or is not correct?

A. No, sir.

Q. Can you state whether or not that refers to the machinery in the factory that was used in the manufacture of shoe machinery, or does it refer to shoe machinery in the factory that had already been made?

A. I can't swear to anything only that it says here: "Machines in factories"—that is all.

Q. And you don't know whether it was machines used in the manufacture of shoe machinery or referred to shoe machinery——

A. No, sir.

Q. That had already been made? Who negotiated the sale of the Eppler Welt Machine Company to the United Shoe Machinery Company or to these people that were——

A. I couldn't tell. I was in Florida.

Q. Didn't you have anything to do with it at all?

A. No, sir. I was in Florida at the time. It was all completed when I returned.

Q. When did you go to Florida?

A. I was in Florida for two or three months—had no knowledge of any deal going on.

Q. Until you got back?

A. Until I got back or was notified.

Q. You went there about November or December?

A. I went in January.

Q. And this was in February?

A. Yes, sir.

Cross-examination:

Q. Mr. Keith, you spoke of the Eppler Company having at first a welt-sewing machine, then afterwards a stitching machine.

A. Yes, sir.

Q. And you named two auxiliary machines?

A. Yes, sir.

Q. Will you give the names of those again?

A. What was named as the stitch separator or pricker—pricking-up machine—and rough rounder.

Q. That was the extent to which there were auxiliaries?

A. As far as my knowledge goes; yes, sir.

Q. In that system. Are you familiar with the operation of the welt-sewing machine?

A. I think I am.
Q. That welt-sewing machine?
A. Yes, sir.
Q. You said about a third of all the machines the company had were in your factory?
A. I think they were at that time.
Q. It is true, isn't it, that the welt-sewing machine laid the chain stitch, which is a double stitch, on the inside of the sole?
A. Yes, sir.
461 Q. And it is true, isn't it, that that had a tendency to raise a ridge or lump around the inside of the sole?
A. Yes, sir.
Q. Against the foot?
A. Yes, sir.
Q. Which had the effect both of lessening the durability of the shoe and of making it uncomfortable?
A. Yes, sir; that is right.
Q. Now, you said you were trying to develop a stitch separator?
A. Yes, sir.
Q. The function of that is to make the stitches on the edge look regular and finish them?
A. Finish them—lift them up.
Q. Without the operation of that machine the stitches are not left by the stitcher in regular order; I mean they are not regularly spaced?
A. That is right.
Q. Will you state from the shoe manufacturer's point of view how important that stitch separator is in the stitching?
A. It simply gives a finish to the edge that can't be produced in any other way.
Q. Were you as a manufacturer attempting to produce it by hand?
A. I have for many years before the machine was made.
Q. I mean as a thing necessary to make the shoe salable did it have to be done?
A. To make it complete in appearance.
Q. It had to be done?
A. Yes.
Q. Did the Eppler Company have a satisfactory stitch separator?
A. No, sir.
Q. How about the Goodyear stitch separator?
A. That was perfected and a good machine.
Q. Now, you say you think you had from thirty to forty machines out?

A. Something of that sort.
Q. Did you have both Goodyear machines and Eppler machines in your factory?
A. I had one Goodyear machine.
Q. Which did the better work?
A. The Goodyear.
Q. Decidedly better?
A. Certainly.
Q. Up to the time of the sale of the Eppler Company to the United Company was the Eppler machine or set of machines commercially successful?
A. Not as a profit maker.
Q. By the way, was there litigation, too?
A. Yes, sir; from the time it first started, too.
Q. With reference to all your machines?
A. All of them.
Q. Claims or infringement?
A. Yes, sir.
Q. Suits brought long before the United Company came into existence?
A. Years before.
Q. In fact, you had been having litigation ever since you began?
A. Yes.

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JUNE 26, 1913.

DISCUSSION IN RE EVIDENCE ON PATENTS.

In the course of a discussion as to the evidence to be offered by the respective parties relating to patents and the manner in which that evidence should be presented, the following statements were made by court and counsel:

Mr. FOWLER. We desire to reexamine Mr. Howard as to those particular matters brought out by Mr. Choate. But, as I understand, it will relate solely, or practically so, to the patent question, and so I take it that that might be taken up in connection with the remainder of the patent matters.

Mr. CHOATE. Well, it will relate to the subjects on which he testified?

Mr. FOWLER. Those particular matters, yes; just to those matters about which you cross-examined. That does relate to patents.

Mr. CHOATE. Well, do you want him now?

Mr. FOWLER. I was going to suggest, your Honor, that if the patent matter is going to be postponed, that might be postponed and taken up with the remainder of it.

It is your honor's idea, then, to have at this time the whole of the patent matter?

BROWN, J. Why, it is a primary question in this case. It is not a mere subordinate matter.

Mr. FOWLER. I will concede that. There is no question about that, but the thing in my mind was this: I had supposed that these gentlemen would want us to put in our entire case, including patents, and then they would want to take up, when your honors should reconvene, their whole defence, including their patent matters.

PUTNAM, J. No, we don't want to take up these patents ourselves. We will send it all to an examiner.

463 Counsel were unable to agree as to the form of the order for the taking of testimony before the examiner with regard to the allegations of the petition set forth in the paragraph beginning at the bottom of page 15. In the discussion of the forms for the order submitted by counsel, the following statements were made by court and counsel:

Mr. FISH. The case is full of matters where we must refer to patents. For instance, our witnesses will go on the stand and will necessarily state in talking about the Plant purchase that the patent situation was an element. Now, I don't expect those witnesses to say that Plant infringed such and such a patent which had such and such a claim. That we will exhaust before the examiner. But we don't want them precluded from showing that the patent situation was an element.

BROWN, J. Ordinarily what the defendant would have the right to put in is predetermined by the paragraph beginning on page 15 rather than by any evidence presented by the United States in support of that paragraph. That is, if you are to put in testimony in support of paragraph 15, the defendant would have a right to put in testimony which would be pertinent under 15.

Mr. GREGG. Oh, precisely.

BROWN, J. Now, do you wish to go any further than that?

Mr. FISH. Do we, your honors? Oh, yes. Our affirmative defence depends upon an understanding of this patent situation to a very large extent. Your honors can't touch the underlying merits of the lease question, for instance, without an understanding of the patent situation; and that is true not only of the lease question, but it is true of such things as the Plant purchase.

Mr. FISH. I would like to ask what objection there is to the order I presented, which means that when we come to deal with

the Plant question before your honors, instead of having to go into patent questions—that is, the validity and scope of
464 patents—it is already done before the master, and is already shown that Plant infringed 100 of our patents that we put in, and so on the fifty or sixty other purchases, almost every one of which we took either because we wanted to use the invention or because there was some patent question. That requires the putting in of a patent.

PUTNAM, J. That doesn't raise a patent question. It raises a patent controversy. All you have got to say is that in good faith you wished to avoid the controversy over the patent. That has nothing to do with the hearing before the examiner.

Mr. FISH. Your honors will hear that in open court?

PUTNAM, J. Why, certainly. That is part of your principal defence.

Mr. FISH. And in open court we are to go into the hundred patents that are infringed by Plant?

PUTNAM, J. Put them in before the examiner as far as you can.

Mr. FISH. But I want to know how far we are to put them in before the examiner.

PUTNAM, J. When you come to the fundamental question, whether you didn't have a controversy that you were justified in getting rid of, that is not a patent question—that doesn't go to the examiner at all.

Mr. GREGG. Suppose they should come in and say "Here was a machine of Plant that infringed ours. We hadn't got to the point where we brought a suit, but we claim that that infringed." We then would have to say it didn't infringe.

PUTNAM, J. It makes no difference—if they make an honest claim and show their claim was an honest one, that is the end of the matter.

Mr. FISH. That is all we propose to do. If there is any patent litigation of the regular kind that takes years, it will be the Government that institutes it. We shall simply say, "Plant infringed patent No. 297,963," and stop there. We thought the best place to do that was before the master.

465 PUTNAM, J. If the Government contests the bona fides of that claim, that opens up the patent question.

Mr. GREGG. If we don't contest it then the case rests—that the action of the United Shoe Machinery Company, or their contemplated action, against defendants was well founded, and that there was an infringement by Plant.

BROWN, J. In the case of an accord and satisfaction the parties have a claim. They don't go into the merits of the claim.

They show, perhaps, whether it was a fraudulent or pretended claim or not.

Mr. FISH. And we, your Honor, shall say Plant infringed patent 297,963, and there we will stop. Now, the Government can do as it pleases after that. We may say, as a matter of information, that that patent is on a laster or a channeler, but we shall stop there.

BROWN, J. It isn't unreasonable that the defence should have that opportunity.

Mr. FISH. We must do that.

PUTNAM, J. That is part of the reply of the defendant in making a prima facie case.

Mr. FISH. We shall stand on the facts. If the Government has anything to say, let them say it.

Mr. FISH. It seems to us we have got to show that we were influenced in buying Plant by the fact that we wanted to use many of his inventions, that we infringed some of his patents, and that he was infringing a hunded of our claims. And we must put in the patents to show that situation as our affirmative defence.

Mr. GREGG. Why can't we proceed before the examiner and take the proof with respect to the allegations on page 15? Let the Government put in its proof and let Mr. Fish put in his defence to our proof. And then when we reach that point, when that has been completed, come before the court with respect to the continuation either before the present examiner or before another examiner.

466 Mr. GREGG. May I make one further statement if the court please? Mr. Howard's examination on the patent question I have discussed with Mr. Fish and Mr. Choate this morning, and we agreed that what examination we would make of Mr. Howard we could make before the examiner.

PUTNAM, J. That is all right as far as we are concerned.

The following order was entered:

"ORDER DIRECTING THE TAKING OF TESTIMONY, WITH RESPECT TO PATENTS, BEFORE AN EXAMINER.

"It is ordered that the taking of testimony, both for the petitioner and defendants, with respect to the allegations of the petition set forth in the paragraph beginning at the bottom of page 15 and ending at the beginning of Section IV on page 16 of the printed petition in the above-entitled cause be, and is hereby, referred to Charles K. Darling as special examiner; and that for the purpose of taking such testimony the petitioner is allowed until August 12th, inclusive, to present its evidence in chief, and

the defendants are allowed from that date until September 27th, inclusive, to present testimony in defence of the proofs presented by the petitioner before the examiner, and the petitioner is allowed from the last-named date to October 11th, inclusive, 1913, to present evidence in rebuttal. The court reserves control of the proceedings before the examiner, so far as either party finds it necessary to protect their rights; and on any question as to the admission of proofs, either party may apply to the court."

PUTNAM, J. Mr. Clerk, you may enter the order.

On December 9, 1913, petitioner filed "List of parts of exhibits to be specifically relied upon by petitioner, etc." (supra Vol. I, p. —).

466A EVIDENCE FOR THE DEFENDANTS BEFORE THE COURT, DECEMBER 2, 1913–JANUARY 14, 1914; FEBRUARY 3, 1914.

APPEARANCES.

For the United States: James A. Fowler, assistant to the Attorney General; William S. Gregg, special assistant to the Attorney General; Allen Webster, special assistant to the Attorney General.

(After the decision in the District Court): Constantine J. Smyth, H. LaRue Brown, special assistants to the Attorney General.

For the defendants: Frederick P. Fish; Charles F. Choate, Jr.; William A. Sargent; Malcolm Donald; Harold G. Donham; Walter B. Farr; Lafayette R. Chamberlin.

DECEMBER 2, 1913.

SIDNEY W. WINSLOW, witness for defendants.

467 I have been president of the United Company since its formation in 1899; prior to that time, from 1886 up to 1899 I was interested in shoe machinery, especially in the Lasting Machine Company. From 1872 to 1886 I was engaged in shoe manufacturing, in the factory of my father in Salem, Massachusetts.

My experience with reference to the actual manufacture of shoes was as follows: I left the high school when I was eighteen years old and went into my father's factory. I began in the cutting room and passed through all the different departments of shoe manufacture, having charge of the various rooms. When I left the shoe factory in 1886 and gave my entire time to shoe machinery, I had become thoroughly familiar with the manufacture of shoes, more particularly with the manufacture of McKay sewed shoes, the kind which we made, although I am familiar to a very great degree with the methods of manufactur-

ing other kinds of shoes. The McKay sewed shoe is the one that is sewed through and through the sole.

Prior to leaving the shoe business I had become interested in shoe machinery. Beginning in 1878 I had had charge of the "Naumkeag buffing machine" business. That was the trade name of a machine invented by my father. After giving up the shoe business I become interested in a buttonhole finishing machine about 1888 or 1889 and soon after that I became interested in the Hand Method Lasting Machine Company, which made the machine afterwards called the "consolidated hand method."

About 1890 substantially all shoes were lasted by hand except the few which were lasted by the McKay & Copeland machine. That machine was adapted to last the very heavy coarse shoes, those shoes in which the necessity for fine drafting of the upper to the last was not present, and was of the bed type. A bed lasting machine is a machine which wipes over the upper at the heel and at the toe at one operation, using forms or clamps at the toe and at the heel. There were also embodied in 468 machines of that type various appliances for drawing the upper over at the shank and at the ball of the last.

Up to the early 90's almost all of the endeavors of lasting machine inventors had been to produce machines of the bed type. About 1890, one Matzeliger, in Lynn, had developed a very crude model of a machine to last shoes by the step by step process. That machine was afterwards developed into the hand method machine and its operation is an imitation of the process used by the hand workman with his pincers. He took hold of the upper with his pincers and drew it over the last piece by piece, while in the operation of the hand method machine the operator holds the shoe in his hands and presents it to the machine and the pincers which are embodied in the machine take hold of the upper, draw it over and plait it whenever desired, as the hand operator did.

The McKay & Copeland machine was the first successful machine of the bed type and was adapted for doing heavy work. The Chase and Ideal machines and the latest development, the United Company's No. 5 machine, are all of the bed type.

The Chase lasting machine was especially adapted to and was developed for the lasting of men's welt shoes. The Ideal lasting machine was developed for the express purpose of lasting women's welt shoes, there being at that time no machine in the market which was adapted to that purpose.

As to whether the Chase and the Ideal machines were developments or adaptations of the McKay & Copeland machine and,

if so, how far, or whether they were different machines, I think it may be broadly stated something this way: The McKay & Copeland was the first commercially successful bed lasting machine. It was not adapted to lasting the lighter grades of leather around the toe and heel, nor to handle the lighter grades of leather in the shank and around the ball, and at the time when it was invented very few, if any, machine welt shoes were being made. The Chase machine was developed somewhat simultaneously with the development of the manufacture of men's welt shoes. Indeed for a long time the only machine-made welt shoes were men's, substantially all. The
469 Chase machine embodied inventions that were owned by the McKay interests, and naturally the successful inventions embodied in the McKay were more or less embodied in the Chase machine, with certain improvements for handling lighter work, lighter leathers. The Ideal, which was a still further development of the principle of the bed lasting machine, departed somewhat from either of the other machines by having a method of wiping the leather up over the toe of the last prior to its moving in over the last. That was necessary in order to get a smooth toe, as is always necessary, at least in a woman's shoe. The leather is very much lighter. It could not be handled practically by either of the other machines. I understand that women's welt shoes were very slow—machine worked shoes—very slow in development, until the Ideal laster had been developed by the Goodyear Company.

At the time of the formation of the United Company the Consolidated Hand Method—the Consolidated & McKay Company—were endeavoring to develop the welt-lasting machine by the step-by-step process, using the same principles that had been up to that time used for lasting McKay shoes.

The Ideal lasting machine was hardly adapted to lasting men's heavy welt shoes commercially. As to many machines it is impossible to say that a machine will not do certain work. In speaking of what a machine will do, it is always spoken of as what it is adapted to do commercially successfully. I shouldn't say that the Ideal would last men's welt shoes commercially successfully. I might modify that by saying that there are always very light leathers in every kind of shoe, and it might be used for that, but as a practical commercial proposition, no.

The Chase machine was not adapted for lasting women's welt shoes. The reason why it was not is that it is a practical impossibility up to the present time to last the leather that is used in the manufacture of women's shoes over the toe by any bed

machine which does not previously wipe it up over the toe before coming in over the last. Neither the Chase
470 machine nor the McKay & Copeland had that function.

By "wiping up over the toe" I mean the movement of the wiper up in a vertical plane. A smooth finish must be obtained around the toe of the last and there is no way in which that can be accomplished on light stock without wiping it up by a vertical movement of the same wiper that moves in over the bottom of the last. (The witness here illustrated the operation with two samples of shoes.) In the movement of the wiper in over the last the wiper comes up to the shoulder on the inner sole.

The McKay & Copeland machine was commercially adapted only for lasting heavy brogans. The Chase was adapted for lasting men's welts and would not last women's welts, and the Ideal was particularly adapted for lasting women's welts, and although it could last men's welts it was not commercially adapted for that use. Prior to 1899 the Consolidated & McKay Lasting Machine Company owned the McKay & Copeland, the Chase, and the hand-method lasting machines. The Goodyear Company owned the Ideal lasting machine.

471 Before 1899 the hand-method machine was adapted for lasting McKay sewed shoes. The last has to be removed before the sole of a McKay shoe is attached because in sewing the outer sole to the inner sole the needle has to pass through both the outer sole and the inner sole into the inside of the shoe. The last is always left in the welt shoe during the attaching of the welt and the outer sole. This difference in method of manufacture has resulted in a different kind of machine for lasting the McKay shoe from the machine developed for lasting the welt shoe. In welt shoes the attaching of the outer sole comprises, first, the attaching of the welt to the inner sole and upper and then the outer sole to the welt, which is all performed outside of the shoe. The inner sole is channeled, as shown in defendants' Exhibit 145, and in lasting the upper has to be forced against the shoulder of the channel. In order to do this some form of wiper must be used and in the hand-method machine there was no wiper which would push the upper in up to the shoulder of the inner sole. The years of experimentation which we carried on were for the purpose of producing a wiper which would do that.

The differences between the requirements of a machine for lasting McKay sewed shoes and those of a machine for lasting welt shoes may be shown by comparing defendants' Exhibit 144, a McKay sewed shoe lasted on the McKay hand method

lasting machine, and defendants' Exhibit 146, a lasted welt shoe. In the McKay sewed shoe of Exhibit 144 the leather all around the shoe is laid down flat and fastened permanently by tacks which are driven to their heads. There is no channel and there is no shoulder in a McKay shoe. In the welt shoe of Exhibit 146 all the tacks except at the heel are left with their heads projecting, to be pulled out afterwards. There are no tacks at the toe, but a wire that runs from the tack on one side of the toe around to another tack on the other side of the toe. That is to enable the needle to pass through the upper and the shoulder of the inner sole in attaching the welt.

472 In the McKay sewed shoe the lasting tacks stay in the shoe all the time and after the lasting operation the last is removed before the shoe is presented to the McKay sewing machine. In the welt shoe, in which the last always remains, the curved needle passing through the welt, upper, and the shoulder of the insole never goes to the inside of the shoe and will never touch the last. [The witness here illustrated with samples of shoes and said:]

The stitch (in the welt shoe) passes first through the welt, then the upper, then through the shoulder to the inner sole, coming out in the channel. The welt forms an attachment to which the sole can be fastened without having to sew through the outer sole and inner sole directly on the inside. It enables you to get the seam by which the outer sole and upper and inner sole are fastened together outside the bearing of the foot.

Referring to my statement that just before 1899, the Consolidated & McKay Company was endeavoring to develop a hand-method welt-lasting machine, in 1899, when the United Company was organized, the Consolidated & McKay Company had developed that machine to a point where it could last the heel, shank and ball, but could not last the toes satisfactorily. In pleating the leather around the toe by the step by step process such a large number of tacks had to be inserted that it was not satisfactory, and no way of wiring the shoe had been developed for that machine.

Prior to 1899, the Consolidated & McKay Lasting Machine Company put out its machines by leasing altogether; it did not sell any machines.

Auxiliary machines supplied with the McKay & Copeland lasting machine were a hand tacking tool, a hand pegging tool,

4. and a pinking machine. The latter was a machine for

473 scalloping; that is, removing pieces of the upper at the toes of shoes which were so very heavy that even on the McKay & Copeland machine it was difficult to last the shoes with-

out taking out pieces of the leather so as to fold the upper in around the toe.

The hand tacking device was used by the operator to drive tacks into the upper and insole after the upper had been drawn over the last. Bed machines did not tack the upper down at all but held it while the operator drove the tacks with his hand device. Hand tackers accompanied each one of the bed 474 machines. The hand-method machine, on the other hand, drew a piece of the upper over the last, presented the tack to a driver and drove it through the upper and then it let go of that piece and was ready to take hold of another piece.

The development in the use of lasting machines between 1890 and 1899 was generally as follows:

In 1890 very few shoes were lasted by machinery excepting those that were lasted on the McKay & Copeland machines, heavy work. The hand-method machine at that time was in very crude condition. Just prior to 1890 the development of the hand-method machine had been placed in the hands of some mechanical experts in Boston. At about that date I became interested in the development of that machine. There were seventeen machines, I think, of that make that were in experimental use in factories. No contracts had been made with any manufacturers regarding their use and the machine was not successful. The manufacturers and the operatives, and I think the general public, were all very skeptical as to the possibility of developing a machine which would last shoes—so much so that my friends thought I was rather out of my head when I invested in that machine at that time. Two or three years after that that machine became successful—at least to the extent that it could be used to last shoes.

In connection with the development of lasting machinery it should be understood that the lasting operation was perhaps a real handicraft operation. There was more personal skill required to draft the upper over the last and place it in position than any other operation required in making shoes. And very few men in proportion to the total number of men were employed in lasting shoes. There were constant strikes. The lasters would leave the shop and that would close the whole factory down. The lasters themselves were in large part a class of men who drifted from one town to another. As a consequence and because of that unbelief of the manufacturer—the skill that was required in lasting a shoe and the opposition of the lasters—the introduction of machines to do that work was a long, slow, and tedious process. Machines would be placed in the factory and operatives taught and then the oper-

atives in that factory would go to the manufacturer and say that they preferred to last by hand and would do it for a quarter of a cent or a half a cent a pair less than they had previously been getting. Then the machine would be stopped. Perhaps after that would succeed the strike on the part of the operatives and the manufacturer would come around and want machines put in again and some new operatives taught.

That went on continually from 1890 up to the time of the formation of the United Company in 1899, always with an increase in the development of the machines for doing the work and introduction of those machines into factories where the work was of a different character, so that by 1899 machines were being used upon almost all the different classes of shoes that were being made. At that time, in 1899, I should suppose—from the best of my information and study of the data—that about fifty per cent, not more than that certainly, of the shoes that were being made in the United States were being lasted by machinery.

The experience that our company had in the introduction of machines would frequently run to educating operators two, three, and sometimes four times in a given factory, have the machine stop and then start up again perhaps three months, perhaps six months, perhaps a year afterwards. The reason for that was not entirely because the machine could not do better work or save the cost of operation, but the prejudices of the superintendents of the factory, together with the prejudices of the operators, made continual trouble and difficulty in keeping the machines going. It was easily within the power of the operative to produce poorer work upon the machines, and it was only the economic saving that gradually wore down the opposition of the operatives and the superintendents of the factories, and made possible their adoption.

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Q. What effect upon the earning capacity of machines placed in factories did these conditions which you have just described have?

A. It frequently happened that by the time that a machine was permanently installed so that it would continue to be operated by the manufacturer the cost of installation would have amounted to all the returns of that machine to the company for two or three years.

Q. The cost of installation, cost of instruction, I suppose?

A. The cost of instruction was the great expense in the introduction of lasting machines. Every operative had to be taught to run the machine. His previous knowledge of lasting was, if anything, a detriment to his learning to use the machine.

His prejudices, his knowledge of how the leather should be drawn over, combined with his actual inability to operate the machine until after he had been taught, made it really very much easier to instruct men who knew nothing about lasting to operate the machine than it did to take the hand lasters, while the company desired to teach the hand workmen, because they were removing just so much of the prejudice every time that they succeeded in getting a hand operator to operate the machine.

Q. I distracted you a little bit from the question that I first asked you. That was the effect upon the earning capacity of the machines of the condition that you have stated a few moments ago. You said that frequently it was two or three years before they would earn enough to pay the installation charges. I meant to direct your attention particularly to the effect of interruption by disputes between the employers and their lasters, or strikes, or disinclination to use the machines, the effect of interrupted work upon the earning capacity of the machines.

A. Early in the '90's none of the machines except the McKay-Copeland had gotten to the point where the continuous operation of the machine was accepted by the company as a permanent condition. The whole development of the use of lasting machines was in a state of flux. The machine would be operating one day in the factory and would be stopped the next day. They would run two or three months, five months, and then stop. Perhaps every year would see a constant development of the permanent use of the machines, but the interruptions in the use of lasting machines really never ceased until after the formation of the United Company, and until so many men had been educated to operate lasting machines that it was possible for the manufacturers to obtain some men who had been educated to take the place of those who had struck.

Lasting machines were always put out on royalty, and it was always the practice to charge an initial premium in additon to the royalty up to, I think, early in 1898, when the Consolidated & McKay Company commenced to place a few hand
476 method machines without initial premium. Previously the machine was always on the initial payment basis.

The initial premium for the hand method machine was $300; for the McKay & Copeland, with which the placing of the pinking machine and tacking machine and pegging machine as auxiliaries was required, I believe the initial premium for all three was $695.

The condition existing and the reason for eliminating the initial premium payment in 1898 or in 1899 in the marketing of the hand method machine was this: The manufacturers were

always very loath to invest money in machinery and many of them could not afford perhaps to take the money from the business, even although they could see a saving. It was also difficult to introduce the machine on account of the scepticism of the manufacturers and they would more readily adopt the machine and try it out if they could put it into their factories without making a payment when it was put in. Also the company had got to a position where it felt that it could use its money to advantage by furnishing the machines without initial charge, thereby hastening the introduction of the machine. It was an effort to broaden and extend our market.

The lasting done by machinery was much superior in some respects to hand lasting. A very much smoother toe and much better heel seat was regularly obtained by machines of the bed type than was possible in the hand operation, while by using hand method machines the forepart and shanks of the shoes were drawn to the lasts better than it was possible for the hand operator to draw them in regular work. He might do as good work if he took a large amount of time excepting on the welt shoe. On welt shoes it was impossible for the hand laster to place the leather around the toe up against the shoulder of the channel of the insole. It was for that reason that the Chase machine made its progress. The result of placing the leather up against the shoulder was to facilitate very much the succeeding operation of the welt sewing machine.

PUTNAM, J. I would like to ask the question whether from his standpoint as an expert in the manufacture of this machinery there was any duplicating in these various classes of lasting machines?

The WITNESS. Not in the true sense. It was possible to use the McKay & Copeland machine on shoes made of leather not quite as heavy as that for which the machine was adapted, but it would be like using a heavy wagon as a pleasure carriage—you could ride in it. There was a claim on the part of each of the manufacturers of the particular machine that his
477 machine could be used upon work which it was not adapted to do. Very soon after a given machine had been introduced they settled into their natural positions. The McKay-Copeland has always remained for the heavy work, and, while it can last the next grade of work, as to doing the work commercially it is not practical or available and would not be used.

The same may be said of the Chase machine and of the hand method. We adopted various devices on the hand method machine to try to adapt the machine for doing heavier work than

it was fitted to do. The use of the machine on such work was something more than experimental because it would sometimes be used for months on that work, but it was abandoned. These machines have the fields which I have described and they naturally belong to them. No manufacturer today would think of using them outside of those fields.

Commercially and practically these lasting machines do not duplicate each other in their proper fields.

The full capacity and additional machinery clauses were used by the Consolidated & McKay Company prior to 1898.

The business conditions that caused the use of the full capacity clause and the additional machinery clause in the leases of the Consolidated & McKay Company were as follows:

The machines might be standing entirely idle in a factory because the operatives had given the manufacturer a lower price for handwork and they were frequently used as a club on hand operators to keep them from striking and to maintain the established prices for handwork. But the machine had been leased for the life of all the patents then embodied in the machine so that our company had no right to take out the machine although it might be entirely idle and although our company might have spent several hundred dollars in teaching operators to run it. It soon became evident that our company must have some security if it was to place a machine in the hands of a manufacturer for a long period and its only return was to be based upon the use of the machine. These were the reasons for the full-capacity clause.

478 As to how we kept track in those days of the use that was made of the machine when it was in the hands of the manufacturer, the operatives keep their day's work upon slips which are sent in to the company at the end of each month. A book is given with each machine, upon which the days of the month are carried on slips, the duplicate to be retained by the manufacturer and a duplicate to be sent in by the manufacturer to the company. The operative enters his day's work, the number of pairs he does, on the slip.

We had to depend entirely on what they told us as to what the use was.

As to the reasons for the additional machinery clause: That goes into the history of the introduction of machinery for any purpose in a shoe factory. In those days the lasters were perhaps in a given factory, we will assume, twenty-five. The manufacturer would put in one machine, or two machines, or three machines, to last shoes. That is, he would try lasting machines—perhaps would adopt three or four—but very seldom

in those days enough machines to do all of his work. His work, in almost every case, varied in grades, not alone the leather but the quality of his shoes. Perhaps he would adopt the machines first upon the cheaper or middle grade shoes. The result of the introduction of a few machines into a factory—in other words, the lasting of part of the shoes by machinery and part of them by hand—brought about the conditions that I have previously described. The manufacturer was constantly dropping back to doing his work by hand, and our machine would stand idle. It was not practicable, many times, to require the manufacturer, as a condition of his taking the machines, to do all of his work upon the machines when they were put in, because that frequently meant that the men would walk out of the factory—and neither our company nor any lasting machine company in those days could equip a factory with not only the machines but the men to operate the machines. That was impossible. So it became, as the conditions were studied, necessary to require that the manufacturer should take additional machines, so far as he did his work by machinery, and that those machines should not be held idle—that they should be used to their full capacity. Otherwise the period of the replacement by machines of hand labor would have been very much delayed and the expense to the company been very much increased.

I was a member of the executive committee of the Consolidated Hand Method Lasting Machine Company and the business advisor of George W. Brown, the general manager. Mr. Brown was associated with me from the time I entered the company. He had previously been for twenty-one years general manager of the Wheeler & Wilson Sewing Machine Company in New England, and was the ablest business man that I knew at that time in the development of the business.

Mr. Elmer P. Howe was not connected with our company prior to 1899. I knew him for a year or a year and a half prior to 1899. When the United Company was organized I conferred principally with Mr. Howe. That was in regard to the Goodyear and Consolidated & McKay Companies. I think we had no conferences with the McKay Company people until the United Company had been organized or was in the process of organization.

479 Mr. James W. Brooks was in charge of the affairs of the McKay Company at that time. He was well along in years and was living in Petersham, Mass., and came to Boston only two days or possibly three days in the week. He was the only man I knew of in executive charge of the business, but my

final negotiations were with Mr. James J. Storrow and Mr. Rudolph Matz, a lawyer of Chicago.

Q. Now, at the time of your negotiations, Mr. Winslow, with Mr. Howe at the time of the formation of the United Company, or subsequent thereto, was there any intent upon your part to acquire complete control of the business of manufacturing and selling or leasing shoe machinery in the United States or with foreign countries?

A. No, sir; there was never any thought or talk of that.

Q. Was any such project ever discussed or considered by any persons interested?

A. No, sir.

Q. What was the purpose or reason for your unification with the Goodyear Company?

A. There were three or four fundamental reasons for the formation of the United Company by the proposed union of the Goodyear Company and the Consolidated McKay Lasting Machine Company. The first was to increase the productive efficiency of the machines that were in the hands of shoe manufacturers. Second, to economize in the manufacture of the machinery itself by bringing that manufacture into one modern factory and standardizing the manufacture. Third, to encourage and increase the manufacture of Goodyear welt shoes by the development of new machines to assist in that manufacture and new methods to lower the cost, to aid and assist those manufacturers who were making those shoes, and induce other manufacturers who were not making welt shoes to enter into their manufacture. It was contemplated in this connection to lower the cost of installation of the Goodyear machines and instruct manufacturers in the manufacture of welt shoes. And fourth, to develop a better service for the instruction of operatives in the use of machines and service for maintenance of the machines in condition to operate regularly, and at the same time decrease the proportionate expense of that service by avoiding the duplication of the depots and men who were employed in that work.

Q. Had you any intent to exclude all other machinery of manufacturers from the business of manufacturing and selling or leasing shoe machinery among the States or in foreign countries?

A. No, sir; never any thought of that.

Q. Was there any discussion among any of the gentlemen interested in the organization of the United Company at any time directed towards such a purpose?

A. None at which I was ever present.

Q. Or that you ever knew of?
A. Or that I ever knew of.
(Mr. Fowler interposed an objection to the foregoing interrogatories relating to the intent of the defendants and especially as to any defendants except Mr. Winslow personally, and to all interrogations of that class.)
Prior to 1899 the situation of the Consolidated & McKay Lasting Machine Company with respect to the service it was able to give its customers was this: The company was furnishing men to instruct operatives how to use its machines wherever they were introduced and men to keep the machines in adjustment so far as it could within its financial resources. It had
480 no offices of its own anywhere in the United States except in Boston and in Brockton. In Philadelphia a stock of parts was carried at the store of The George A. Smith Machinery Co., who were dealers in shoe findings and leather. Our men called at their store and received notice if a manufacturer sent in word that he wanted a man to go to his factory. Such parts as our men took out to place in machines were charged by the Smith concern to our company and we gave them credit for the parts. They acted as our agent in the selling of parts.
The same system was followed with the Ross-Moyer Manufacturing Company in Cincinnati and Chicago. There was a similar arrangement in Haverhill with C. P. Bullen, and with H. W. Coldbath, in Lynn. All of these parties were men doing business, and carried our parts. This was the extent to which we had any depots.
The Goodyear Company had its own offices throughout the country, in Auburn, Maine, Lynn, Haverhill, Brockton, Worcester, New York, Philadelphia, Burlington, New Jersey, Cincinnati, Chicago, St. Louis, New Orleans, and Rochester, New York. It carried its own parts and had its own men located in each of these offices. The Goodyear Company also had a system of traveling men to instruct operatives in the use of its machines and to keep the machines in adjustment at the call of the manufacturer.
The Consolidated & McKay Company and the Goodyear Company were supplying a good many of the same customers and there were duplicate equipments for giving service, one by the Goodyear and one by our company, in Lynn, Haverhill, Brockton, Philadelphia, Cincinnati, and Chicago.
The McKay Shoe Machinery Company was giving the same service that the other two companies did, but the extent of

that service was about the same as that furnished by the Lasting Machine Company. The Ross-Moyer Company carried a stock of spare parts in Chicago and Cincinnati for heeling and metallic machines, as well as for lasting machines, and also carried a stock of the wire used in the metallic machines. That
481 was also true of The George A. Smith Company in Philadelphia, where we had our parts. In Brockton they had a depot with the Brockton Stay Company, not the same place as ours, but in Haverhill and Lynn their headquarters were at the same places as ours. In New York their headquarters were with J. K. Krieg and Company. All of those parties carried a stock of wire and spare parts for the McKay Company's heeling and metallic machines.

Each of these three companies was employing its own traveling mechanics and instructors who in many instances were traveling to the same places, visiting the same factories and carrying parts to the same places, but each set working on their own particular machines.

As to what the disadvantages or difficulties with the then condition of things were, and what we proposed to do in the way of systematizing and organizing:

In 1899 very few shoe factories were equipped throughout all departments with the complete system of machinery. Many of them, as I have stated, did not have lasting machines. Where they did have such an entire equipment there was an entire lack of harmony in the operation of the machines. The metallic machines or heeling machines in Brockton, for illustration, upon welt work, where there are very few metallic machines used the service might be very poor as furnished by the McKay Company; the service would be good always of the Goodyear Company because they had a regular staff. But so far as the Lasting Machine Company and the McKay Company were concerned there was no constant service. It depended entirely upon the extent to which those particular machines were used in that locality. There might be a lot of lasting machines and very few heeling machines, a lot of heeling machines and very few lasting machines. Neither one of the companies gave a good service. In other words, the entire continuity of operation, the regularity of operation of the factory, was dependent upon that service that was rendered by that one of three companies that gave the least efficient service. Both Mr. Howe and myself recognized that condition, and it seemed that by bringing our two companies together we could get a uniform service that would produce a

great deal higher percentage of efficiency of the machines than if a given factory was dependent upon an independent call to us and an independent call to their office. If the service was brought into one office, if the entire service was unified, a call coming in there would be attended to at once, no matter upon what machine it was needed. The regularity and continuous operation of the machines is dependent upon what may be termed instantaneous service. In the welting and stitching machines of the Goodyear Company it is not the breaking of parts necessarily, it is the machine getting out of adjustment so that the stitch is not a proper one. The integrity of the shoe that you wear is entirely dependent upon the way in which the stitch is set. And many of the operatives are not proficient at all in the knowledge of how to keep their machines in adjustment. They can operate it and do the work, but they are not mechanics in the sense that a machinist is a mechanic.

Such a machine as that is adjusted by cams and shafts and other mechanical devices so that various machines must be timed with reference to each other. The cams may be fastened on the shaft, but there are many more adjustments which are delicate adjustments in the sense that they are adjusted by screws. To take the tension adjustment for one illustration, that has received, I suppose, as much attention as any other particular part of the sewing machine.

482 That is the tension of the thread, to be sure that the stitch will be set with the lock below the surface of the leather—and that ability to set that stitch in the proper place is fixed by the way in which the machine parts are adjusted relative to themselves, to each other. And the tightness and laying of that stitch is absolutely vital to the goodness of the shoe.

All of these machines, you see, handle material. Take the hand-method machine. It handles tacks, and the tacks have got to feed down a raceway and at each operation the tack has got to come into position where the driver will take it and drive it; not only that, but it has got to drive it home so that if it is a McKay shoe it will head on the iron surface of the last. And if the tacks do not feed, and feed regularly, the machine is out of operation, no matter how skilful the man may be. It is the same with the welter and the same with the stitcher.

This factor of service is at the very base of the successful operation of a shoe factory. The work is planned to travel from one room to another in fixed quantities. So many pair go in in the morning—so many pair come out at night. The operatives are dependent upon that work traveling along regu-

larly to them. The breaking down of some of these machines will in many of the factories block the entire flow of the work. Of course, in any factory it will throw out of regularity the production of the factory and throw out of work many times the operator that follows the particular operator on the machine that has broken down or got out of adjustment. Of course, the operators in shoe factories are paid by the piece almost entirely. From the standpoint of the shoe machinery manufacturer and the shoe manufacturer and the operative, the ability of the factory as a whole to turn out its work right along regularly as if it were going through one machine is vital. Factory space is economized; the earning capacity of the investment in the machinery is vitally affected; the operatives' pay has as its foundation, of course, the regularity of the work. Indeed, the
483 result, if I may speak of it in that way, of this unification of the service has been in some cases to reduce the piece price to-day of the operatives below what it was in 1899, and at the same time enable them to make more pay.

Q. Was the service which was being given the shoe manufacturers by the three companies that went into the United prior to 1899 in any measure satisfactory?

A. No; I should say that the Goodyear service was perhaps the best service that was being rendered.

PUTNAM, J. I didn't get that.

Mr. CHOATE. I say—Was the service being given before 1899 by these three companies that went into the United in any measure satisfactory?

Mr. FOWLER. We object to that question, because it must be a mere conclusion. Satisfactory to whom—to the operatives, to the shoe manufacturers, to shoe machinery manufacturers? I object to it.

PUTNAM, J. If you will put the question a little more narrowly, Mr. Choate, please.

Q. Well, was it satisfactory to you, Mr. Winslow, as connected with the Lasting Company?

A. It was not.

Q. Was it giving satisfaction to the shoe manufacturers?

PUTNAM, J. Now, I didn't get the question. I got Brother Fowler's objection.

Mr. CHOATE. Whether the service that was being given by the three companies prior to 1899 was satisfactory?

PUTNAM, J. To whom?

Mr. CHOATE. I asked him first if it was satisfactory to him as connected with the Lasting Company. He said no. Then

I asked him if it was giving satisfaction to the shoe manufacturers.

The WITNESS. It was not. I don't think it was satisfactory to anybody.

PUTNAM, J. No; you have answered the question.

484 The operations of the lasting, welting, stitching, heeling, and metallic fastening machines were consecutive in a very large degree, and consecutive in the sense of being important consecutive operations. The order of their operations in the making of a shoe was as follows: The first operation was the lasting of the shoe. From the lasting machine it went to the welter and was welted. Then the loose-nailing machine, which is a metallic fastening machine, fastened the heel seats. The stitching machine followed the loose-nailing machine. Then the shoe went to the heeling machine, and that operation was followed by the slugging of the heels on another metallic machine.

Another reason which I gave for the consolidation was our purpose to increase the productive efficiency of the ma-

485 chines in shoe factories. In speaking of the productive efficiency of the machines I had in mind the amount of shoes upon which the machine would operate in a given day or week or year; in other words, the productiveness of the machine in the work that could be done upon it. A machine might have a capacity to do a thousand pairs a day, but for some reason other than the ability of the machine to do the work it would not produce its work. The operative himself might not be efficient. The way in which the work came to that particular machine might not be right. The machine itself might be broken down. The manufacturer might have only one machine, and that operative might be out, in which case we frequently found him a man. The many ways in which this service has been used had led to the conclusion on the part of some of the men who were familiar with the practical side of the business that a service could be furnished which would very materially increase the productivity of the machines daily, so that less machines would be needed, less floor space, a given investment in the machines would earn more money, the operatives themselves could earn better wages, and the result of that is productive efficiency; in other words, we did produce an ability on the part of the machines to increase the number of shoes that would go through them.

Another reason which I stated for the formation of the United Company was to economize in the manufacture of machinery by bringing that manufacture into one modern factory and standardizing the methods of manufacture.

Prior to 1899 the Goodyear Company was manufacturing in a factory on Albany Street, in Boston; the Lasting Machine Company at Beverly, Mass., and the McKay Company at Winchester, Mass. The Goodyear Company was employing less than 200 men; about 300 were employed at Beverly, and about 500 at Winchester; in all about 1,000 men in 1899.

In the manufacture of the machines of these three companies there were many parts in common, but they could not be interchanged. Screws, for example, might be used on ten different machines where the same strength was required, but the screw made for one machine would not fit any of the others. This is only an illustration of what was true of a great many parts which could be standardized and made interchangeable, and have been. This resulted in a very large saving in the number of parts to be carried in different places. The bringing together of these factories also enabled us to establish our own foundry. Since the United Company was formed, for the first time in the history of shoe machinery iron patterns for casting have been developed and are almost universally used now, reducing the cost of manufacture.

486 It was intended and expected that the consolidation would effect a very large saving in the management expenses and it so resulted. There were three superintendents at that time in the factories. The time of two of those superintendents is available to-day for the development of the art of making machinery. They are not used as superintendents of manufacturing. While, broadly speaking, we made no saving by discharging men, their time became available in other directions, so that their productivity was availed of to economize and develope the business.

When I met Mr. Elmer P. Howe to negotiate for the unification of our companies, he was engaged in the practice of law and he did not want to have the burden of the management of the Goodyear Company. Prior to the formation of the United Company I was asked if I would take the presidency of the company if a consolidation was effected.

My remembrance is that it was after the United Company was organized and I know that it was before we had transferred any of the properties, that Mr. Storrow, representing the McKay Company, approached me. I don't remember meeting Mr. Brooks. After the formation of the United Company he was not active in any way in the machinery business and did not even remain as a director of the United Company. He retired to his country home and I don't know that he engaged in any active business after that.

Q. (by Mr. Choate). Mr. Winslow, the United States charges that in organizing the United Company you designed and intended to enhance the value of the shoe machinery which you had at the expense of the boot and shoe manufacturers and of the public generally; did you so design and intend?

A. No, sir.

Q. And that you intended to use the same as a means for unlawfully controlling interstate and foreign commerce to a greater extent than was warranted by your letters patent; did you so design and intend?

A. No, sir.

Q. They say that you determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery; did you so determine?

A. No, sir.

Q. And to destroy existing competition among manufacturers and dealers in such machinery; did you so intend?

A. No, sir.

487 Mr. GREGG. If the court please, taking the whole bill together, the only charge that we make there and the only thing that we contend for is that they have monopolized machinery designed and adapted for use in the manufacture and attaching, preparation and attaching, bottoms to the uppers of shoes, the clicking machine and the eyeletting machine.

PUTNAM, J. I so understood from the case. I don't know that it appears in the record. I think that better go in the record just as you state it.

Mr. GREGG. Well, I have stated it two or three times. There is no objection to it going in the record.

PUTNAM, J. I am not sure it is in the record. I so understood it.

Mr. GREGG. We make no contention that they designed or intended to monopolize machinery used for sewing the uppers to the shoe at all.

PUTNAM. J. That has been my understanding, but I think it should go in the record.

The WITNESS. In 1898 about 17,000,000 pairs of Goodyear welt shoes were manufactured and the total production of shoes in the United States at that time was about 175,000,000 pairs, so that a little less than 10 per cent of the total production was Goodyear welts. In 1898 about 85,000,000 pairs of McKay sewed shoes were made.

In 1899 about 18,000,000 pairs of turn shoes were made; about 22,000,000 pairs of welt shoes; about 200,000 pairs of hand welt shoes; about 100,000 pairs of McKay welt shoes; about 7,500,000 pairs of pegged shoes; 26,000,000 pairs of standard

screw shoes; 2,500,000 pairs of loose nailed shoes; about 83,000,000 pairs of McKay sewed shoes, and about 12,400,000 pairs of miscellaneous shoes. These are round numbers.

The 83,000,000 pairs of McKay sewed shoes made in 1899, constituting about half of all the shoes made in that year, had their soles attached by the McKay sewing machine. This is the machine that fastened the outer sole, inner sole, and upper together. That machine was not owned or controlled by either the Goodyear Company, the Consolidated & McKay Company, or the McKay Shoe Machinery Company. It was owned and controlled by the Stanley Manufacturing Com-
488 pany. Probably ninety per cent of the machines which united the parts of the upper of the shoe were supplied by the Wheeler & Wilson Sewing Machine Company.

The Reece Buttonhole Machine Company furnished probably every machine that was used by shoe manufacturers for making buttonholes in button shoes and for finishing the buttonholes.

The Consolidated & McKay Lasting Machine Company held the stock of the Davey Pegging Machine Company and the Consolidated Company was marketing that machine.

Before 1899 the Davey pegging machine was leased only and never sold. Prior to 1899 an initial premium had been charged. That had been the practice for a number of years. Whether it had been entirely removed or an optional form adopted in 1898, I can't remember.

A shoe made on the Eppler welter differed from that made on the Goodyear welter in that the Eppler machine placed the chain of the stitch in the channel of the innersole, within the surface upon which the foot rested in the wear of the shoe, whereas the Goodyear machine placed the chain of the stitch on the welt so that the chain was outside of the surface upon which the foot bore. In the manufacture of an Eppler welt shoe it was impossible to use an inner sole of as light weight as could be used in the manufacture of a Goodyear welt shoe, because the chain of the Eppler machine would cause a ridge in any light inner sole which would be uncomfortable for the foot. This necessity for using a thicker inner sole added to the expense of making the Eppler welt shoe. In making the Eppler welt shoe they had to use an unnecessarily expensive inner sole which did not add to the wear or value of the shoe and was used merely to avoid the uncomfortable result of the heavy stitch, and also the Eppler machine could not make satisfactory shoes with light substitutes for, or canvas reinforced, insoles.

The location of the chain by the Eppler machine made it absolutely valueless for making turn shoes, in which the sole is

always light and has to be for that character of shoe and the method of its manufacture. The chain stitch of the Eppler machine could not be satisfactorily concealed in the sole of a
489 turn shoe. I know of no Eppler machines ever being used in the manufacture of turn shoes.

The Goodyear welter was then and always has been the machine for making turn shoes and was perfectly adapted for making turn shoes. The fact that it locates the chain outside of the part of the shoe on which the foot bears makes it adaptable for either welt or turn shoes and it was being used for both welt and turn shoes before 1899 and the number of turn shoes I have given as made prior to 1899 was made on the Goodyear machines.

In 1899 the best shoe from the manufacturers' standpoint and the best shoe for the comfort of the wearer and the health of his foot was the welt shoe, and the best type of that shoe was the Goodyear welt. The Goodyear came on the market before the Eppler.

In the survival of the fittest the Eppler shoe gradually disappeared. There was a sharp drop in the number of Eppler shoes made a year or two after the United Company was formed. As soon as manufacturers of Eppler shoes could obtain the Goodyear auxiliary machines and the litigation between the Eppler and Goodyear companies had let up, they adopted the machines which they preferred to use and very few manufacturers continued to use Epplers for any length of time.

There was a lot of litigation existing at that time between the Goodyear Company and the Eppler Company. Our reason for acquiring the Eppler Company was to get rid of that litigation between the Goodyear and Eppler Companies in the starting out of the new company, to get it all out of the way.

Of the two systems the Goodyear had the more complete and satisfactory line of auxiliary machines. The Goodyear Company had what was known in the trade as the Hadaway stitch separator, the rough rounder and channeling machine, and the automatic leveling machine, all three of which were very important auxiliary machines. The Eppler Company had a rounder which did not channel and was not anywhere near as satisfactory from the shoe manufacturer's standpoint as the Goodyear machine. It had no leveling machine of its own. The machine that it was trying to use as an auxiliary to perform the operation that was performed by the Hadaway stitch separator was not as
490 good as the Hadaway machine, and there was very serious litigation over that. In the trade—I speak purely from trade knowledge—it was understood and believed that the Eppler Company would not be able to continue the use of that machine.

There were cases, many cases, where we would find customers for one kind of our machines that would be in difficulty because of this litigation between the Goodyear and the Eppler—for instance, people who had our heeling machines or lasting machines might have an Eppler machine. To have allowed that litigation to continue would have brought the United Company into a position where they would have been obliged to carry on litigation against their own customers.

Personally I had no doubt as to which was the better system and which would survive. I thought the Goodyear was the better system and would survive.

A welt shoe with the chain of the chain stitch laid in the channel in the bottom of the insole was known in the trade as an Eppler shoe.

It was the practice of the Eppler Company to limit its machines to the manufacture of Eppler welt shoes, the welter with the stitcher and the auxiliary machines with the welter and stitcher. The auxiliary machines were all limited to be used with the principal machines and in the manufacture of Eppler welt shoes. The Goodyear machines could not make an Eppler welt and the Eppler machines could not make a Goodyear welt.

After 1899 the United Company furnished to any manufacturer who wanted Eppler machines all he wanted of them and took care of them just the same as we took care of our other machines. We continued to do that as long as anybody wanted Eppler machines. We did not disturb anybody who was using Eppler machines or who had a lease of Eppler machines existing prior to 1899.

The regular rate of royalties charged by the Eppler Company prior to 1899 was four cents net for men's shoes and
491 three cents net for women's shoes. I don't remember the others but they were the same as the Goodyear net royalties. There were sporadic instances of special rebates given by the Eppler Company, but their regular rate was the same as the Goodyear.

Q. What did you do with reference to the royalty on the Eppler? Did you increase it any?

A. Where the contract with the lessee was a special rate like that, we endeavored to have him adopt the full rate where we felt that it could be done without violating any absolute agreement of the Eppler Company. Notably Mr. Keith himself, who was a large manufacturer, voluntarily agreed to that. In fact, he changed over his machines very soon after that. That was to make the rate uniform among all users and gives no special advantages to anybody.

In exchanging stock of the McKay Company for stock of the United Company my remembrance is that they got $11.00 per share for their stock, $5.50 in common stock and $5.50 in preferred stock of the United Company for each share. The par value of their stock was $10.00. $11.00 was substantially the market price of the McKay Company stock at the time the trade was made.

The price allowed for Goodyear stock by the United Company was substantially the same as the price at which Goodyear Company stock was being bought and sold at that time. That was also true of the Consolidated & McKay Company. I think the properties of all the companies were put in at their fair market prices, but I think the stock of the Goodyear Company and that of the Lasting Machine Company was selling for less than it was actually worth. We based our exchange upon the market prices.

After the organization of the United Company no changes whatever were made at first in the methods of supplying machines to manufacturers. The same machines were supplied by the United Company that had been supplied by each and all of the companies and on exactly the same terms.

492 Our plans with reference to the systematization of the service commenced to be put in effect almost immediately after the formation of the company, within from two to four months. Neither Mr. Brown nor I was personally acquainted with the men in the road service of the Goodyear Company or the McKay Company, and we started at once to study those men to see who were the best men to be put in charge in the different districts. Each territory was studied, and the best man from whichever company it might be was put in charge of that district.

In Cincinnati, Chicago, and Philadelphia the question arose almost immediately as to how we should complete our arrangements there for rendering the service from one office instead of from two or three maintained by the respective companies.

Mr. Ross, of the Ross-Moyer Company, and Mr. Smith, of Philadelphia, both old shoe men, at once took up the question with us as to where they would fit into the new company. At that time they were carrying stock and parts for the McKay Company and the Lasting Machine Company, and taking that business from them and putting it into our own offices would have so reduced their businesses that they were very much concerned.

We took over the Ross-Moyer business at the solicitation of Mr. Ross. The Goodyear Company had its own offices at Cin-

cinnati and Chicago. The Ross-Moyer Company was carrying stock and parts at Cincinnati and Chicago for the McKay Company and the Lasting Machine Company, and consolidating the two agencies in those two cities led to the purchase of the Ross-Moyer Company and the employment of Mr. Ross as the western agent of the company, in charge of all the western offices.

There was absolutely nothing more in our doing that than our purpose of doing the square thing by Mr. Ross. They had been connected with the McKay Company and the Lasting Company for years; part of our own family, so to speak. Mr. Ross was our general agent in the West until two or three weeks ago, when he died.

493 In Philadelphia George A. Smith & Company was the agent carrying stock and parts for the Lasting Machine Company and the McKay Company. It was really a findings store more than anything else. It carried also the wire for the McKay Company. When Mr. Smith found that we were going to unify this service and bring it all under one head, he wanted we should buy him out, and we did acquire his business. He was doing no manufacturing. I can't give you the exact figures, but the greater part of his business, excepting as to the handling of leather, selling leather, was the business of the McKay Company. We did not acquire his leather business. I have forgotten whether he disposed of that to someone else or not.

Mr Smith practically retired from business. He wanted to get out. He was not young—he had been in business a great many years; and as we were going to consolidate the businesses and the service he thought it would be a good time to urge us to take over his other business, and we did.

J. K. Krieg of New York had been the representative of the McKay Company, carrying the McKay parts and the metallic material. He had also carried some parts for the Lasting Company, but not to such an extent as the others. Manufacturers left messages for our men at the Krieg place, which was the headquarters for our men. J. K. Krieg had died and his business was being carried on by his estate.

The Goodyear Company also had its own office in New York.

We dealt with that situation in this way: We acquired that part of the J. K. Krieg business, which related directly to the business that was done with shoe manufacturers. The younger Krieg retained the business that had to do with retailers. In all of these cases the moving motive in making these arrangements was from Mr. Ross in the Ross-Moyer and Smith, and

representatives of the Krieg estate, who wanted in the rearrangement to make the best arrangements for themselves.

Another similar case was the purchase of the Stanley store in Frankfort, Germany. They had acted for the McKay interests there and carried machines and parts and their manager had either just left them or died—I have forgotten now just how it was—but Mr Stanley, because we were going to establish our own depots over there, solicited our acquiring the stock, 494 machines and parts that he had in Frankfort. A good many of these were McKay parts of our own, so that in that transaction the conditions were really reversed We became agents for such machines as he built for himself and took over the stock that he had there in the store but no manufacturing.

Smith in Philadelphia did no manufacturing but he had one small machine made for him outside. It was a scarfing machine and unimportant.

Krieg in New York had a small repair shop in which he employed one or two men and boys for repairing, and when he was not repairing he built some small machines.

Our agent in England for the Lasting Machine Company was Pearson & Bennion. They made or manufactured no machines that were made or manufactured by either of the companies which came together to form the United Shoe Machinery Company. They did make a few general department machines in England. Their principal business, probably eighty per cent of it, was the business they did as the agent for our lasting machine. We took their business, put our business with it and formed the British United Company. They entered our employ, and Mr. Bennion was made the general manager of that business. That was the reason; it was just putting in corporate form what had previously existed, only he was made the manager of all the business of these three companies. That completes the list of agencies.

As to the development of the service for shoe manufacturers since 1899, the service is now so far ahead of what existed in 1899 that there is really no comparison. At each depot is a general manager and a body of men who are experts in the adjustment and repair of all the machines. These men are at the call of the manufacturers by telephone at any moment of the day and are at their service nights, if necessary, to rearrange their factories or readjust their machines. There are men to teach new operatives how to run the machines and how to take care of them. That service is complete in each shoe manufacturing district in the country.

In addition we have men who are treated by the manufacturers as their engineers and who act in an advisory capacity as
495 to the rearrangement of factories and the improved processes of manufacture. We send these men around to the factories to call the attention of manufacturers to opportunities to improve their methods of manufacture. This service always includes the instruction of operatives. There is also a service in continually supervising and watching the operation of the machines by our experts, and in order for the manufacturer to keep a given set of machines in constant operation these men have to be acquainted with the manufacture of the particular kind of shoes made in each factory because the requirements as to the work of the same machines may be very different in one factory from the requirements in another factory.

These men have to know how to run the machines themselves, how to adjust them, repair them, take them apart and put in parts.

No charge whatever is made by our company for any services rendered by any of these men or for their expenses. The manufacturer knows nothing as to the cost of the service rendered. All he pays is the prices of the parts just as if he ordered them from us to put them in himself. He has no expense for the man's time or expenses.

As to how much territory we have to cover with the service—the Chicago office until very lately has served the northwest. And our men have to travel quite long distances, to Milwaukee, for illustration, some 200 odd miles. From the Lynn office they serve the Lynn territory, Salem, Marblehead and Beverly; from Brockton—Campello, and Marlboro and that section. From the Haverhill office thay serve Newburyport and Portsmouth and travel up to Manchester, New Hampshire. All the expenses of this service, including the salaries of the men and their traveling expenses, are a part of our expense and none of it is charged to the manufacturer.

There are over 600 traveling men alone, without including the managers or the staff that handles the stock of parts. There is a stock of parts in each of these depots for practically
496 every machine which we produce, so that they are in a position to repair any machine immediately.

Without accounting for the cost of carrying parts or the expense involved in the parts becoming obsolete, which occurs many times, the expense to the company of providing this service for manufacturers is about $1,200,000 per year.

As to the increases in the number of men in the service department since the organization of the company, I have a memoran-

dum which gives for each year the number of branch-office managers, roadmen and other traveling men, including salesmen, attached to the offices. This is defendants' Exhibit 211 (Rec., p. —).

To show the extent of this service and the number of calls answered, I have prepared a statement showing the service rendered during the year 1911 in the factory of E. W. Burt & Company, a small factory in Lynn. This shows the machines which they have, the number of shoes manufactured, the total calls made and the times when the calls were received, answered, and finished. It is a fair sample. This statement is defendants' Exhibit 212 (Rec., p. —).

I have prepared a similar statement of the service rendered to L. A. Crossett (Inc.), of Brockton, a large manufacturer. This statement covers only the last six months of 1911 because the computation for the entire year was so large. This statement is defendants' Exhibit 213 (Rec., p. —).

497 Crossett has twenty-two welt and turn sewing machines and made about a million pairs of shoes in 1911. The number of calls at his factory was 1,150, and 5,620 hours were spent in answering those calls.

I have also had prepared a statement showing the number of calls made on the service department, the number of hours spent in answering those calls, and the number of operators taught during the year 1911. This is subdivided to show the service in each district. There are eighteen different offices, located at Auburn, Maine; Haverhill, Massachusetts; Manchester, New Hampshire; Lynn, Massachusetts; Brockton, Massachusetts; Marlboro, Massachusetts; New York City, New York; Philadelphia, Pennsylvania; Harrisburg, Pennsylvania; Rochester, New York; Lestershire, New York; Cincinnati, Ohio; Chicago, Illinois; Milwaukee, Wisconsin; St. Paul, Minnesota; New Orleans, Louisiana; St. Louis, Missouri; and San Francisco, California.

Mr. CHOATE. I should like to put in this tabulation of what Mr. Winslow would testify as to the total calls, which, in the year 1911, were 192,524. The time consumed in answering them was 1,110,593 hours; there were 2,209 Goodyear operators taught, 956 metallic operators taught, 1,006 heeling operators taught, 1,359 lasting operators taught, 956 pulling-over operators taught, and 2,403 eyelet and general operators taught. And then this is subdivided as to the service at each station.

(List showing total calls on service department, number of operators taught, and time expended in 1911, is defendants' Exhibit 214, Record, p. —.)

The WITNESS. I know of no shoe machinery concern which has given any service with its machines between 1899 and 1911 except the Reece Buttonhole Machine Company, which does furnish a certain service in connection with its machines.

In carrying out our purpose of consolidating the manufacturing of the machines in one modern factory and standardizing the methods of manufacturing, about January, 1900, a committee of our manufacturing men was appointed to visit the various manufacturing plants throughout the United States and

498 gather data as to the best methods of manufacture, the most efficient machines, the most efficient arrangement for carrying on the manufacture from one department to another, and the best character of factory for the operatives. After that committee had worked about a year we began to build a large factory at Beverly, Massachusetts.

To avoid any possibility of the tools for duplicating parts of machines being subject to destruction by fire we built the factory of concrete, and I think at the time that was the largest concrete building in the world. A great deal of care and thought was put into the arrangement of the floors and rooms to eliminate waste in carrying machines from one part of the factory to another for different operations. In factories that had been built up to that time for the manufacture of shoe machinery nothing of that sort had been gone into; while the buildings were modern in construction, they were not modern in their arrangements of the parts of the factory with reference to the economy of production. The Beverly factory has been added to from time to time.

The facilities for manufacturing the different kinds of machines were transferred to that plant successively from the old factory at Beverly, from the Winchester factory, and from the Goodyear factory. None of the three factories of the constituent companies prior to 1899 was adequate for the occupation of all of them, and there was no land connected with any of them, except possibly Winchester. The Beverly factory was not owned by the Lasting Machine Company, there wasn't room to develop the Goodyear plant, and Winchester was a poor place to manufacture on account of the lack of labor. It was not a manufacturing community. Labor had to be developed there. Beverly has about 75,000 people within a five-cent fare.

At the new plant in Beverly we continued to manufacture all of the machines which we had been marketing before and we employed more labor from time to time. About 1,000 men were employed in 1899, and at the beginning of this suit there were over 4,000 men employed at the Beverly factory. There has been a gradual increase right along.

499 At the time the United Company was organized neither Mr. Howe, nor Mr. Barbour, nor Mr. Hurd, nor Mr. Brown, nor I, nor any of our associates, made any agreements whatever to restrain our activities in the manufacture of shoe machinery, or to restrain the activities of anybody else. The subject was not given any consideration.

Since 1899 there has been an increase in the number of Goodyear welt and turn shoes manufactured.

In 1904, five years after the company was organized, 26,000,000 pairs of turn shoes were made as compared with 18,000,000 pairs in 1899, and 48,000,000 pairs of welt shoes were made as compared with 22,000,000 pairs in 1899.

In the calendar year ending December 31, 1910, 34,000,000 pairs of turn shoes and 86,000,000 pairs of welt shoes were made, that is, the number of welts had been increased nearly four hundred per cent, from 22,000,000 in 1899 to 86,000,000 in 1910, and the increase from the 17,000,000 pairs of welts made in 1898 to the 86,000,000 pairs made in 1910 was five hundred per cent.

These figures and also the figures for other kinds of shoes are shown in the memorandum of Defendant's Exhibit 215.

DEFENDANTS' EXHIBIT 215.

	Number of shoes made in—		
	1899	1904	1910
Turns	18,272,000	25,900,000	33,966,000
Welts	22,700,000	47,950,000	86,231,000
Hand welts	197,000	669,000	1,188,000
Stitch downs			1,510,000
McKay welts	111,000	58,000	582,000
Fair stitched	805,000	478,000	1,066,000
Pegged	7,475,000	9,157,000	3,202,000
Standard screw	25,802,000	21,627,000	19,004,000
Loose nailed	2,567,000	3,123,000	6,469,000
McKay sewed	82,457,000	94,608,000	105,698,000
Misc. shoes & slippers	12,400,000	15,733,000	20,000,000
	172,786,000	219,363,000	278,916,000

500 The WITNESS. The efforts of our company toward aiding in and perfecting the manufacture of Goodyear shoes, in the way of experimentation and invention, have been as follows:

Soon after the formation of the company the development of inventions and improvements of machines was placed in the hands of a committee comprising three or four of the inventors experienced in shoe machinery inventing. Every new idea or suggestion was submitted to that committee, who made an investigation and reported their findings to the heads of the respec-

tive departments; and a decision was made according to which a man was put at work to develop the idea, or it was filed as not being practicable or not of commercial value.

That work has been carried on consistently and continuously, until now there is a very large organization that gives its entire time and attention to the development of ideas of our own men, or ideas that are suggested to us, or to consideration of inventions which are submitted to us.

From almost the beginning of the company to the present time we have done everything we know how to do to advance the art of making shoes by machinery.

As soon as we had developed a new machine which performed an operation then being done by machines in the shoe factories, that machine was built in a wholesale way and was placed in the hands of the manufacturers without any charge whatever for the improvements or for the new machines, and the old machines were taken back and scrapped. No charge was made for substituting the new machine and taking out the old one. If the improvement was an attachment, that was added to the manufacturer's machines without any charge to him.

The most striking illustration of the new machines which the company has invented and given to the trade is the Rex pulling-over machine and the auxiliary machines used with it. Broadly speaking, the pulling-over machine does the work formerly done by the hand operator in preparing the shoe for the lasting machine. The pulling-over machine draws the upper over the last at the center and at each side of the toe and attaches it
501 temporarily to the inner sole, all at one operation, and while the shoe is in the machine the operator can adjust the upper to bring the seam of the tip in a right line across the toe and to locate the heel seam directly in the center of the heel in a straight line. Unless those two lines are made correct the shoes would not be salable. Formerly this operation was always done by hand.

Auxiliary machines of the pulling-over system were devised to co-operate with that machine. The assembling machine temporarily fastens together the upper, innersole, counter, and last prior to the operation of the pulling-over machine. They are fastened by a tack near the heel seam, and a tack on the bottom fastens the counter, innersole, and upper together. Defendants' Exhibit 7 illustrates the operation of both the assembling and pulling-over machines.

The clicking machine was another machine which was developed by the experimental department of our company and per-

haps saves more money for the manufacturer than any other machine which has been produced. That machine enables the manufacturer to cut his uppers accurately and with the least loss of stock. Before this machine was invented the method was to have a pattern made of zinc or leatherboard which the cutter placed upon the stock and then cut around it with a hand knife. The knife always cut by the corners of the pattern, resutling in a waste of leather. Of course the stock where the leather had been cut by the knife passing the corners could not be used.

With the clicking machine a very light die is used and that machine saves every bit of the waste that was caused by the hand knife cutting beyond the corners of the pattern. The clicking machine not only saves the very valuable stock but it increased the product of the workman by at least two-fold, and the quality of its work was infinitely better. Every piece was perfect. Also at the same time the part of the upper was cut out certain marks were made to facilitate assembling the parts.

502 Since my knowledge of the shoe art no machine has accomplished so much for the art as the clicking machine. Another advantage of the machine was that every hand cutter was able to take the machine and use it. Almost every other machine in the art that I have known would require an education to enable the hand workman to use the machine.

In the five years before the beginning of this suit, 1907 to 1911, inclusive, the United Company expended in its experimental department $2,267,954.70. The details by years are stated in defendants' Exhibit 216.

DEFENDANTS' EXHIBIT 216.

Amounts expended for experimental account.

During the years—	
1907	$364,326.41
1908	380,477.45
1909	383,605.75
1910	537,183.78
1911	602,359.31
Total	2,267,954.70
Average per year	453,590.94

The WITNESS. I have here a report (defendants' Exhibit 217, Record, p. —) showing how the expenditures for experimental work were distributed among various machines during a sample month, October, 1911. On this report is listed each experiment being carried on in the factory during that month, the amount

of money expended during that month, the amount previously expended, and the total expenditure, on each experiment. That is a fair sample of each month's work and the report was made to me in the ordinary course of business. A similar report has been rendered to me for each month during the preceding years.

Each order number shows the work being done by a particular inventor upon a particular development. For example, order K 35791 had $539.10 expended on it in October; $31,640.55 had been previously expended, so that at the end of October a total amount of $32,179.65 had been expended upon that particular order.

503 In the fifteen years we have brought out at least an average of seven or eight new machines a year. The value of these machines is the value to the shoe manufacturers, not necessarily the value to our company. We might expend a large sum of money upon a machine which might not in itself be of large value to us but it might improve the product that would go to some other one of our machines, so that that machine would do better or more work. Such a machine was the assembling machine and another was the stapling machine, which saves the manufacturer the cost of a great many needles and it saves a lot of cost for damage caused to the machines when needles break, and so on. There are specific values for a given machine in the art of making shoes that may be entirely out of proportion to its commercial value.

The machines produced by the experimental department have reduced the cost of manufacturing the welt shoe more than the total royalty that we received from our machines, or now receive from our machines, used in the manufacture of welt shoes.

I know of no other practical way to advance the art except to work and study and spend money on these experiments. Every idea is submitted to a committee who are thoroughly familiar with modern methods of making shoes. If any idea appeals to that committee as of value to the manufacturer, either in improving the quality or reducing the cost of manufacturing shoes, they authorize an order and start work upon it by the man who they think is best fitted to work out that idea.

504 The increased efficiency of the machines in the shoe factories is the result of the development of invention and the improvement in the service which has been rendered to the shoe manufacturers. I have the figures which show that improvement and efficiency.

DEFENDANTS' EXHIBIT 218.

Comparison of efficiency of lasting department machines.

	Lasting machines.	Auxiliaries.
Machines under lease:		
March 1, 1900	4,512	4,503
March 1, 1911	7,276	5,499
Increased percentage of machines, 1911 over 1900	61.2	35.6
Average number of pairs operated upon per machine in calendar year of—		
1899	24,741	.....
1910	30,703	.....
Percentage of increased efficiency per machine in calendar year of 1910 over 1900	24	.....

Comparison of efficiency of heeling department machines.

	Attaching machines.	Auxiliaries.
Machines under lease:		
March 1, 1900	1,382	1,180
March 1, 1911	2,019	3,180
Increased percentage of machines, 1911 over 1900	46	167.8
Average number of pairs operated upon per machine in calendar year of—		
1899	67,214	.....
1910	109,142	.....
Percentage of increased efficiency per machine in calendar year of 1910 over 1900	62.3	.....

Comparison of efficiency of Goodyear department machines of welt system.

	Welt sewing.	Outsole stitching.	Auxiliaries.
Machines under lease:			
March 1, 1900	853	1,193	5,561
March 1, 1911	1,943	2,676	13,001
Increased percentage of machines, 1911 over 1900	127.7	124.3	133.7
Average number of pairs operated upon per machine in calendar year of—			
1899	26,612	19,960	.....
1910	44,380	33,847	.....
Percentage of increased efficiency per machine in calendar year of 1910 over 1900	66.7	69.5	.....

Comparison of efficiency of Goodyear department machines of turn system.

	Sewing.	Auxiliaries.
Machines under lease:		
March 1, 1900	485	1,050
March 1, 1911	564	2,530
Increased percentage of machines, 1911 over 1900	20.4	141.8
Average number of pairs operated upon per machine in calendar year of—		
1899	37,674	.....
1910	58,161	.....
Percentage of increased efficiency per machine in calendar year of 1910 over 1900	54.3	.....

The WITNESS. Taking first the lasting machines, these figures show that on March 1, 1900, which was the earliest date for which

I could get exact data, there were 4,512 lasting machines out on lease, while on March 1, 1911, there were 7,276, an increase of 61.2 per cent in the number of machines. Comparison of the average number of pairs of shoes operated upon per machine in 1899 with the average per machine in 1910 shows an increased efficiency per machine of 24 per cent.

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An even greater increase in efficiency has been prevented by the high-toed lasts like defendants' Exhibit 135. High-toed lasts slow down the operation of the lasting machine at least 50 per cent as compared with shoes made of the same leather upon a last of the ordinary construction. To conform the upper such as shown in defendants' Exhibit 19 to the shape of a high-toed last requires enormous drafting power and it would have been almost impossible to last shoes on such lasts by hand. It required the combined power and mechanical characteristics of the pulling-over machine and the No. 5 lasting machine to place the upper properly upon high-toed lasts. Before the introduction of these high-toed shoes our lasting machines showed a higher percentage of efficiency compared with the 1899 machines than they do now.

Referring again to defendants' Exhibit 218, that shows an increase of 46 per cent in the number of heel-attaching machines, we had out on March 1, 1911, compared with March 1, 1900, while the increased efficiency per machine in the year 1910 compared with 1900 was 62.3 per cent.

In the Goodyear department the increase in efficiency per machine in 1910 as compared with 1900 was 66.7 per cent for the welt sewing machine and 69.5 per cent for the outsole stitching machine. For the turn machines the increased efficiency in 1910 over 1900 was 54.3 per cent for each machine.

PUTNAM, J. Do you mean to say, Mr. Choate, that by practical operation of practical men at an expense to the Shoe Machinery Company this increased efficiency has been given to the manufacturers and the cost merely charged off?

Mr. CHOATE. Yes, your honor. We have not increased the royalties. I am coming to that in a moment and will show you how the royalties have been decreased—and we think the cost of producing a pair of shoes has been decreased by these methods.

PUTNAM, J. In other words, you claim that this amount of money has been expended for improving machinery, intelligently expended by intelligent men and expert men, and the cost charged off?

Mr. CHOATE. Yes, sir.

PUTNAM, J. That is your proposition?

Mr. CHOATE. Yes, sir.

507 The WITNESS. In the year 1911 I made a study and prepared some data upon the savings effected, as between 1899 and 1911, in the cost of manufacture of the Goodyear welt shoe by increased efficiency of the machines and by decrease in royalties. The results that I obtained showed a total saving amounting to eight and one-quarter cents per pair. Of this saving the decrease in royalties amounted to three-quarters of a cent, comprising a quarter of a cent that had been paid to the company making the sole laying machine and one-half a cent which had been paid to the Gem insole company for the use of its machines; that was before we acquired those companies. After we acquired those machines we credited the royalty to the manufacturers, so that there was a direct reduction of three-quarters of a cent per pair on the welt shoes made by the use of those machines.

On turn shoes there has also been a direct reduction of three-quarters of a cent on women's shoes and one-half a cent on children's shoes, amounting to 50 per cent of the royalty. That reduction was in 1900.

In figuring the savings on Goodyear welt shoes I averaged men's, women's, and children's shoes. On other kinds of shoes the manufacturers had the benefit of these savings so far as the machines were applicable to the reduction of the cost of those shoes.

On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents.

Nearly all the machines that were being made by the Goodyear Company in February, 1899, have been replaced by new and inproved machines. With hardly an exception, none of the old machines, including the auxiliaries, are now being built. The improved machines have resulted in savings in the cost of operation, or in the material used, or in the cost of maintenance and the reduction of equipment required, or in the improved quality of the work.

508 Of the saving, a cent and three-quarters per pair in the cost of manufacture is effected by the group of machines comprising the new welter, new stitcher, new rough rounder, new power grooving and beveling machine, the new Universal channeling machine, tack puller and resetter, new welt beating

and slashing machine, the welt indenting and burnishing machine, the impression stitch burnishing machine No. 2, and the Goodyear jointing machine. The savings by these machines result from the increased speed of operation of the new welter, the new stitcher, and the new rough rounder, and from the pulling of tacks and resetting of tacks on the tack pulling and resetting machine, always before done by hand. These savings include the savings accomplished by the Plant improvements on the welter. Without the Plant improvements the savings would be somewhere between three-eighths of a cent and a half a cent less than that.

It is entirely untrue that the modern welter and stitcher do not operate any faster than the old machines. They are at least 50 per cent faster in average speed than the old machines; that is, they will sew 50 per cent more stitches in a minute than the old ones would.

The next group of machines which effected a saving in the manufacture of welt shoes are the Ideal clicking machine, the Duplex eyeletting machine, the Ensign lacing machine, the lining cementing machine, and the improved skiving machine. I have credited three cents per pair saving as effected by those machines, but that is less than the manufacturers of welt shoes have said their saving was in leather by the use of the Ideal clicking machine alone. Three cents is well within the actual saving effected by those machines.

A saving of two cents is effected by the group of machines comprising the insole heel seat rounder, the insole tacking machine, the Rex pulling over machine, the Rex assembling machine, the Rex pounding machine, the upper trimming machine, and the No. 5 lasting machine.

It is almost impossible to calculate the amount of savings effected by these machines on high-toed shoes. On those shoes probably the saving in lasting alone by the No. 5 lasting machine was two cents a pair, without reckoning the savings for the other machines.

509 To encourage and develop the manufacture of welt shoes very low terms were put upon the machines of this group to work with the rest of our system of machines, but while these machines are especially valuable on Goodyear welt shoes they may also be used in the manufacture of other kinds of shoes; for example, McKay shoes.

A quarter of a cent saving has been effected by the hand method lasting machine which we have furnished for lasting the sides of shoes the toes and heels of which are lasted on the

No. 5 lasting machine. Formerly the sides of shoes lasted on bed lasting machines were lasted by hand. We now furnish the hand method machine to users of the No. 5 lasting machine, so that they have two machines for lasting a single shoe and pay but one royalty. This furnishing of a double equipment is not altogether at our loss because the product is increased.

I have allotted a quarter of a cent saving to the Crest heel blacking machine, the channel cementing machine, and the tip scouring machine.

All of the machines in these groups are new machines which the company has invented and brought out and the savings effected by them amount to a total of seven and one-half cents. Adding our reduction in royalties, the sum is eight and one-quarter cents.

The total royalty which the United Company receives for the use of all its machines to make a man's Goodyear welt shoe is five and a fraction cents, I think. This is subject to correction.

I have prepared figures showing the difference in cost, as between 1899 and 1911, of equipping a shoe factory producing 300 pairs a day with machines for making welt shoes. More than half of all the factories in the country produce on the average less than 200 pairs per day.

510 Assuming that a manufacturer making 300 pairs of welt shoes a day obtained from us in 1899 such general department machines as we furnisded in 1911 and the machines of the Goodyear department, the lasting machines, heeling machines, and metallic machines, he would have paid in initial premiums and in purchase prices for the general department machines $6,930.50. Those were the best terms on which a manufacturer could have obtained those machines in 1899, from whomever he obtained them.

Assuming that this manufacturer took from us in 1911 the same machines, taking the general department machines under lease—the same line of machines, with the addition of 18 auxiliary or general department machines, which were not in existence in 1899, would have cost him $1,430, a difference in his favor of $5,500.50.

The cost of the machines in 1911 would include the purchase for $293.59 of certain machines which were not leased either in 1899 or 1911; such initial payments as had still not been removed in 1911 and were in existence in 1899, $543; $50 for some small equipment; and $543.50 as rentals for the first year of auxiliary machines and general department machines.

There are quite a number of factories making a thousand pairs of shoes a day, and I have made a similar tabulation of the cost to

the manufacturer of equipping a factory making a thousand pairs of Goodyear welt shoes with such machines as he could have obtained from us in 1911. I have compared the cost of those same machines in 1899, whether they were produced by us or by whomever they were produced. This comparison, however, covers only a part of the cost of the entire equipment of the factory because it does not include machines used in the fitting room or stitching room, or any machines other than such machines as we produce. These figures show that the cost in 1899 would have been $11,300.50 and in 1911 would have been $2,467.50, a difference of $8,833 in favor of the manufacturer.

511 Defendants' Exhibit 219 (Record p. —), entitled "A List of the Various Styles of Men's, Women's, Misses', Boys', Youths', Children's, Little Gents' and Infants' Shoes," shows the great variety of the different types and the methods of manufacturing shoes.

Defendants' Exhibit 220 (Record p. —) shows the many different ways of fastening the sole to the upper. These different methods sometimes require adaptations or modifications of machines and sometimes additional machines or additional attachments. It requires a great many different kinds of machines and a great many different changes in the machines to enable them to make all the shoes that any one manufacturer may desire to make. The United Company has endeavored to meet the requirements of manufacturers in this respect.

The United Company has suppressed absolutely no machines, no inventions and no improvements.

In no instance when an initial premium is charged has that been increased over what was charged prior to 1899 and in no instance has the royalty charged on any machine been increased over that charged in 1899.

Less than one per cent of the shoes that were lasted by machinery in 1899 were lasted on the Ideal lasting machine. The Ideal machine was an improved machine of the same type as the Copeland rapid laster.

I have prepared a list of machinery, findings and supply dealers who advertised in the trade papers in 1899, 1900 and 1901 and whose businesses the United Company did not buy. This is Defendants' Exhibit 221 (Record p. —) and the total number of concerns is about 80.

BROWN, J. Well, competitive concerns that you did not buy out?

PUTNAM, J. The question of Judge Brown was how far they were competitors.

BROWN, J. How far would you have been expected to buy them out?

Mr. CHOATE. If we were attempting to obtain a complete monopoly of all the shoe machinery business, we should
512 have had to get those. And even the admission of the counsel for the United States does not entirely cover the situation. We want to prove the contrary of the allegation in their bill and the allegation which they still cling to.

Mr. FOWLER. Just glancing here, I see a number of them were manufacturing lasts. I did not know that lasts had anything to do with this lawsuit.

BROWN, J. The last is shoe machinery in the sense used in this case.

513 The WITNESS. I have compiled a list of the ideas, suggestions, and inventions submitted to the experimental department of the United Company from June 23, 1904, to December 12, 1911, by persons other than those employed by t heUnited Company as inventors, which ideas, suggestions, and inventions have not been purchased or acquired by the United Company. These were submitted to us without solicitation upon our part and each was thoroughly and carefully investigated by the experimental department, the patent department, and commercial department. They aggregate 493.

Nothing has ever been done by the United Company to prevent the exploitation or development or manufacture of the ideas, suggestions, or inventions which we have declined to take. This list is defendants' Exhibit 222 (Record p. —).

PUTNAM, J. Now, the question Judge Dodge suggests, and which occurred to me, but I didn't think I needed to call to your attention, is what we were talking about this morning. The bill alleges that:

"For the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery."

You both say that that is not the purpose, that you don't quite mean that, and the record taken down this morning will show that you don't mean it entirely; but the question is whether, for the sake of clearness and certainty, you shouldn't amend that allegation in that bill, which is evidently broader than you intend.

Mr. FOWLER. I will take that up with Mr. Gregg, and we will consider that matter in the morning.

PUTNAM, J. We have no power to make an order on it, but I am simply calling it to your attention for the sake of clearness.

Mr. CHOATE. I think they intended to say that, but they found they couldn't prove it.

Mr. FOWLER. I didn't understand so myself.

PUTNAM, J. We won't talk about what they couldn't prove.

DODGE, J. We don't seem to get anything yet which will form a proper basis for those particular allegations.

Mr. FOWLER. Well, I never have understood that the purpose of this litigation was to go further than was stated by Mr. Gregg this morning.

513A DODGE, J. I understand that the allegations are now disclaimed and abandoned.

Mr. FOWLER. As broadly as stated in that particular one; yes.

BROWN, J. There is a very substantial difference between the allegation that they intended to monopolize the shoe machinery business and the charge that they intended to monopolize machinery related to a particular part of the manufacture, to wit, the bottoming of shoes. It is about as different a case as can be imagined.

Mr. FOWLER. Well, there is some relationship between them.

PUTNAM, J. It is a good deal safer to allege a good deal more than you intend to prove than it is to allege less.

Mr. FOWLER. Well, I think when the bill is taken as a whole, and the particular businesses of these concerns that are alleged to have gone into the combination are taken into consideration, it is pretty clearly shown in the bill what the purpose was.

PUTNAM, J. It is hardly worth while to discuss it. It is really for your determination and Mr. Gregg whether you will let that stand as it is or modify it.

BROWN, J. It is the difference between a monopolist and a specialist.

PUTNAM, J. A specialist might be a monopolist.

The WITNESS. In regard to the Goddu Sons Metal Fastening Company, an arrangement was made with Goddu, senior, and his sons to purchase the stock that they owned in the Goddu Sons Metal Fastening Company and their patents which had not been transferred to that Company and still belonged to

514 them, and a contract was made with them for their services for a period of years, including such inventions as they might make. That arrangement was entered into on my part because of the fact that I very much desired to start the United Company free from all serious litigation. I was aware of the fact that there was serious litigation existing between the McKay Company and the Goddus. I knew Mr. Goddu, senior, quite well and believed personally that the patents then standing in his and his sons' names, and those that had been transferred

to the Goddu Company, belonged in reality to the McKay Company. The Goddu inventions related to metallic fastening machines.

Mr. Goddu, senior, came to me and wanted the transfer, or arranged to have the United Company take this property, saying to me that Mr. Van Wagenen, who had been associated with him, had induced him to embark in this enterprise—the Goddu Sons Metal Fastening and the work which had brought about this situation—and that he was sorry that he was in that place and wanted to relieve himself of the position that he was in. I was very glad to get rid of the situation which meant I didn't know how much litigation and how much time it would require from me, and to get that whole matter cleaned up and clear the litigation.

Louis Goddu, senior, had been for a long time employed by the McKay Company, until his break with them, and had done considerable inventing in metallic fastening machines. His work had been very meritorious and was the base of the McKay metallic machinery business.

I was aware of the breach and litigation between him and the McKay Company before the United Company was organized. Both he and Mr. Van Wagenen had seen me within a year before that and had talked with me about the matter.

I do not remember and have not acquainted myself with the suits which were in existence at that time, but I knew that there was extensive litigation.

The Goddu Sons Metal Fastening Company had no machines whatever in the hands of customers. Their machines were in a state of development and none of them, to the best of my judgment, was in condition to be placed in the hands of manufacturers for continuous operation. As I knew the situation, they were in a state of development where some of them could have been, without extensive changes, made operative.

515 They had no factory, but Louis Goddu had a small machine shop, with a few tools in it, adjoining his house, and that was where their experimental work was done. That shop was not a manufacturing establishment.

The patents which were the subject of litigation between the McKay Company and the Goddus were some of them in the names of the Goddus and some stood in the name of the Goddu Sons Metal Fastening Company.

The claim that the McKay Company made was that Mr. Goddu, senior, was the real inventor of the inventions that were embodied in the patents, and that they were taken out in the names

of his sons. Mr. Goddu claimed that the patents that had not been transferred either to the McKay Company or the Goddu Sons Metallic Fastening Company belonged to him. I myself believed that in fact they belonged to the McKay Company. I appreciated the length of time and the difficulty of establishing that by a decree of the court. I had had considerable experience in that sort of litigation

Q. Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?

A. I did not.

I never stated to Mrs. Converse that we acquired the Goddu Sons Company for the sake of getting rid of competition. I remember my conversation with her when she was Miss Van Wagenen. She came to see me early in 1900. She was an entire stranger to me before I met her on that occasion, and the conversation was, as I remember it, in the neighborhood of half an hour. During that time I do not remember any talk about competition. I do not remember that word being used.

She asked me regarding the company and my purchase of the stock of the Goddus; and the substance of the conversation that I had with her, in reply to a question as to why I acquired the stock and patents, was on my part that I wanted to get rid of any further trouble with the Goddus. I made no statement to her regarding her father's connection with the affair, as it had been reported to me by Mr. Goddu, nor my own opinion regarding that connection. I did not believe that Mr. Van Wagenen's connection with the Goddu enterprise had been a proper one.

516 My remembrance is that, while in 1899 we had acquired a controlling interest in the stocks of the constituent companies, none of the property of either of the companies was transferred to the United Company until some time in 1900 and until the transfer of the properties the business of the several companies was continued by them, respectively, exactly as it had been. The same methods of marketing machines and the same forms of leases were used as before the formation of the United Company. Leases of the original companies were used and the name of the United Company was stamped upon them.

In connection with the organization of the United Company neither I nor my associates had any thought of acquiring ownership and control of all concerns engaged in manufacturing and dealing in shoe machinery and then refusing to sell or lease any of the essential machines except on condition that the manufacturer buy or lease of us practically all other machinery that was necessary or useful to him.

During the period for a year or two on either side of 1899 the art with respect to invention and development of shoe machinery was not stationary and new inventions and improvements were being made all the time.

The first change made by the United Company in the method of marketing any of the machines which had been put out by the constituent companies prior to the organization of the United Company was the adoption of the new metallic lease of the United Company, about the middle of the year 1900.

For a year or two before 1899 the McKay Company had been putting out its machines without any lease, and that practice was continued by the United Company up to the middle of the year 1900.

At that time Mr. Charles H. Willson, who had been assistant to Mr. Brooks in the management of the metallic end of the McKay business, reported to me that the price of copper had been constantly advancing so that there was not a proper margin of profit in the sale of wire material used in the metallic machines, that he had called Mr. Brooks' attention to that fact just before our coming together, and that before 1899 he had prepared
517 a list of advanced prices at which the material should be sold. He suggested to me that something should be done and that I should take the matter up.

Great amounts of brass wire and nails are used in the metallic fastening machines, and the price of copper is the important factor in the cost of that material. We use spelter, composed of two parts of copper and one of zinc.

In January, 1898, copper was eleven cents a pound; in January, 1899, 12.8 cents per pound; in January, 1900, and in January, 1901, 17 cents per pound. During 1900 the lowest price was 16 cents in four months, 17 cents in three months, and from 16¼ to 16¾ in four months. It averaged about 16½ cents a month.

The old leases provided that the minimum amount of material for each metallic machine should be 400 pounds a year and a very substantial amount of that would be copper.

This very considerable increase in the price of copper was a very serious factor, because the prices of the material used in the metallic machines constituted the entire royalty received for the use and care of those machines, and the margin between the cost of the material to the company and the price at which it was sold to represent that royalty had been fixed years prior to 1899, when copper was very much below these prices. The increase from 11 cents to 16 cents, of course, all came out of the royalty, so that it was a very serious question. All the royalty we got

was the profit on the material, and when the material increased in cost the royalty disappeared.

In view of this situation we adopted a policy of limiting the use of those metallic machines to work that had been done on machines of some other department that paid us a royalty. We restricted the use of the machines to footwear which had been lasted and welted and stitched upon machines leased of the United Company. That policy was adopted about August, 1900.

That is, we got our royalty indirectly. We did not increase the price of material furnished for the metallic machines nor did we increase the royalty on the machines to use with which we restricted the metallic machines.

518 We also adopted, in February, 1901, an alternative independent form of lease by which the use of the metallic machines was not limited to use with the machines of any other department and under which the manufacturer paid ten per cent more for his material than he did under the limited license form. This form of lease was the result of negotiation and agreement with the manufacturers.

Both forms of leases were offered to every lessee of the United Company simultaneously and he made his choice. Manufacturers had the right to take the independent form and to change from that to the limited form at any time while they held the machines. If they elected to take the limited form they had either one or two years within which they could change from that form to the independent form of lease. A manufacturer who was in doubt could of course take the independent form and take all the time he wanted to change to the limited form

Manufacturers expressed a decided preference for the limited license and a very great body of the lessees took that form.

Since that time manufacturers have had a chance to take the metallic machines upon either of these forms, or more lately on a lease with an initial payment which is not limited to use with machines of any other department. Accordingly manufacturers have more recently had three alternatives, although it has been the intention of the company to withdraw the ten per cent form and substitute the initial payment lease in order that the price of material might be uniform to all lessees.

Throughout our business dealings our prices, service, and forms of lease have been the same to every one; we have made no price for any royalty or for any material or in any way that was not open to every lessee the day it was made.

We have never granted concessions of any sort. Rebates, as I understand the United States to charge in connection with the Gem machines, have been offered and have been open to all our

lessees under the same circumstances; there was nothing secret about it in any way. Our royalties have been the same
519 to all, whether they used a thousand machines or one; they are charged by the pair and the service is exactly the same. No lease or modification of lease is adopted at any time that is not open to all lessees at the date of its adoption.

In connection with the new forms of metallic leases there was no change made in the terms upon which Goodyear department machines were offered to customers and no restrictions were made with reference to the facilities with which they might obtain or use Goodyear department machines or with reference to the machines that were leased prior to 1899. The lessee of the Goodyear machines was not required to use our metallic machines or our lasting machines. The requirement operated the other way because of the low return on the metallic machines.

There was no change in the method of marketing the heeling machines until the year 1904. As to the occasion for the change which was made in that year, in the early spring of 1904, as a result of long consideration of the subject, we had started to get out a lease for the Goodyear machines and their auxiliaries, without requiring the payment of an initial price, as had always been the case up to that time. As there were a great many machines in that department, and the amount involved was very large, that matter received a great deal of consideration, and it was not until late in that year that such a lease was finally prepared, not in fact until months after we expected to have it ready. Having that in contemplation, we had decided that if we were to remove that source of income, give up that source of income for the company, that we should be entitled to receive from that factory a surety of a further income, so the heeling machines were limited by that lease to use with the Goodyear department machines and some other departments.

That was in effect simultaneous with the taking off of the initial payment on the Goodyear machines, because during the year 1904, while we had under contemplation this lease and were working on it, we furnished to a large number of manufacturers the loan of Goodyear department machines, and my remembrance is that in the case of every machine that was placed out after July 1st in that year, 1904, the manufacturer was allowed to exercise his choice of taking them upon the noninitial form of lease when it was gotten out, or the initial payment.

With reference to preserving an alternative form of heeling department lease, it has always been the policy of the company to maintain the right of the lessee to take a machine upon the preceding form of lease, if he cared to have it that way. There

never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease.

520 The business reasons which led us to the adoption of the form of Goodyear lease without the payment of initial premium but accompanied by restrictive leases in the heeling department and the lasting department were as follows:

The manufacture of Goodyear welt shoes required up to that time the investment of a very much larger amount of money for machinery and equipment than was required for any of the other types of shoes. This had resulted in the manufacture of welt shoes being limited to quite a large degree to those manufacturers who had a substantial amount of capital, but some of those manufacturers had seen their businesses grow so fast that they were embarrassed to find the money to add to their equipment. That was especially true as regards the auxiliary machines. Our company had spent a great many thousands of dollars to develop the auxiliary machines and believed that the use of all the auxiliary machines would produce a better shoe and that every manufacturer ought to have the benefit of them. They would facilitate the manufacture of a shoe, but it was a grave question with many of the manufacturers whether the improvements in quality or the little savings that could be made by the use of the auxiliary machines would warrant their investing their money in those machines in a fixed form rather than using it in their business, where they turned it over two or three times a year.

Furthermore, the removal of initial payments would allow those who were entering into shoemaking, and all the other small manufacturers who were making other kinds of shoes, to equip their factories with a complete system for making Goodyear welt shoes so that they would be as well equipped as the largest and richest manufacturer in the country. The United Company believed that if those opportunities were offered its revenue and the manufacture of the Goodyear welt shoe would be very much increased. This of course required an investment by the United Company of a very large sum of money without any immediate return.

521 I believed in the Goodyear shoe. I think there is no question in the minds of manufacturers, or of wearers who know the differences between shoes, that it is the best kind of footwear for any person to wear, and our endeavor was to bring that shoe within the reach of every one.

This policy really took effect about July, 1904. Nothing was said to manufacturers and the lease was not presented to them

until November or December of 1904; but if I remember correctly manufacturers were given the right to take these leases for any machines received by them after July 1, 1904.

Both forms of Goodyear department leases, the old initial premium form and the non-initial premium form, have been continued as alternatives up to the present day at the choice of the manufacturer.

The difference between these leases, other than the initial premium, is that under the non-initial form the lessee paid royalty on all shoes welted or stitched in his factory, while on the initial form he paid royalty on all shoes welted or stitched on the leased machines.

There was no restriction whatever placed upon the use of the welter and stitcher in connection with any other machines.

The auxiliary machines of the Goodyear department were restricted to Goodyear welt shoes that had been or were to be operated upon by either the welter or stitcher leased from the company. We got no royalty whatever on the auxiliary machines and got our return only through the royalty paid on the principal machines which are treated by us as measuring machines for the payment for the use of the entire system.

Mr. CHOATE. There was no alternative form of lease for the Goodyear auxiliary machines. Those were leased only; restricted to use with the welter and stitcher. There was no royalty. There was a rental of from one to perhaps thirty-five dollars.

The WITNESS. A lessee did not have to take the auxiliary machines, but if he did take them they were restricted to use with the welter and stitcher.

After 1904 the heeling machines were either put out on independent leases or on leases restricting their use on shoes that were welted or stitched, lasted, metallic fastened or pegged on our machines.

522 The hand method lasting machine was leased either on an initial premium independent lease, not restricted, or on a lease without an initial premium restricting the machine to use with the Goodyear welt sewing and stitching machines and to the metallic machines. The No. 5 lasting machine was leased either on an independent, unrestricted lease with an initial premium or on a lease without an initial premium limiting the machine to use with the pulling-over, metallic, heeling, and Goodyear welting and stitching machines.

When lessees believed they wanted to put in machines other than those held from our company, or when it seemed to them that the necessities of their business required that they do this, the policy of the company has been to reorganize the leases

which they then had so as to leave them in a position to use those other machines. For example, if a manufacturer wished to use Pettengill heelers, which are not built by our company, in the place of our heeling machine, we asked him to respect his leases up to the time when he made that decision. Then he could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others. When a manufacturer made such a change we did not ask any different or larger initial premiums than the regular premiums or anything different.

I have had prepared a list of the new concerns which have entered the business of manufacturing shoes since March 1, 1900. If the new concern succeeded an old one, that fact is indicated on the list, which is defendant's Exhibit 223 (Record p. —). 746 entirely new concerns entered the business of manufacturing shoes between March 1, 1900, and December 31, 1911. 270 succeeded old concerns, making a total of ~~1,046~~. 1016

1,033 shoe manufacturers were lessees of the company in December, 1911. The reasons and the conditions existing in the shoe machinery business as it is done by leasing which have brought about the use of the full capacity clause are as follows:

523 The leases as existing in 1899, and as issued practically up to the present time, gave the possession of the machinery and the right to use the patents embodied in that machinery to the lessee, either for the life of all the patents that were then embodied in the machines, or for seventeen years upon his keeping certain conditions. The payment to the owner of the patents in these leases was dependent entirely upon the use that was made of the machines. Experience of the companies who were leasing machines prior to 1899 had shown them that frequently their machines would be in the hands of the manufacturers and would not be used for one reason or another. The machinery companies had gone to the expense of teaching operatives, educating the manufacturer in the use of the machines, and were by the custom of the trade called upon to teach the operator at any time in the use of those machines. My own experience with the Lasting Machine Company had shown me that we might start and educate operatives on the machines two or three times, and then the machine would be stopped. Some method had to be adopted to properly protect the interests of the machinery company if it were to continue to lease machines.

Q. Either the lessee had to be required to use it, or you have the chance to get it back and let somebody else use it; that is about the size of it?

A. Some means had to be adopted, and the full capacity clause was introduced as being a proper notice to the lessee of what was expected of him.

Q. Now, the additional machinery clause which you have already noted was found in the leases prior to 1899. Will you state briefly when that came into the leases of the company, and, if it ever went out, when it went out?

A. The additional machinery clause went into the leases of the United Company when the first new leases covering those particular machines were printed for the United Company.

Q. You mean the particular machines which the leases had covered before?

A. Which had been in the prior companies.

All of those additional machinery clauses were removed from all of the leases of the United Company not later than 1907, and they were not in use and did not represent the policy of the company at the time of the bringing of this suit.

The United Company has never adopted the policy of requiring the exclusive use clause as an agreement upon the part of the lessee. That clause has always been in the form of a right reserved to the company in case the lessee does not use exclusively and the conditions are unbearable. The business reason for the adoption of that policy is as follows:

The manufacturing of shoes is one that is divided into substantially two seasons. The manufacturer with an average production of a thousand pairs per day, in other words, who makes 300,000 pairs of shoes in the year, will ordinarily have to have a capacity to produce 600,000 pairs. His production in certain months will run at the rate of 2,000 pairs per day, and in other months as low as 500 pairs per day, so that if he 524 has the machines of our company—our entire income is dependent upon their use—we have to furnish him the equipment to make the 2,000 pairs per day, although his total product only averages a thousand pairs per day. We furnish him that equipment for his maximum output, which is only used, the maximum, I am quite safe I think in saying, not over three months out of the twelve, and from that it runs down, varying according to the man's particular business, to from twenty-five per cent to fifty per cent.

As to whether it would be practicable as a business matter to furnish a man with machinery sufficient for his maximum

output, and only get a return based upon his average output or his minimum output, the basis upon which the investment was made is not based upon their minimum use.

Defendants' Exhibits 212 and 213 (Record pp. ——) which I prepared to show the service, give figures showing the production month by month and the total for the year in the factories of E. W. Burt and the Crossett Shoe Company. One is a small factory and one is a large factory.

In addition, I have prepared a statement of the classified production in 1911 at the factory of John Strootman Shoe Company, in Buffalo, New York. The capacity at that factory is 800 pairs per day, about 400 pairs McKays and 400 pairs divided between welts and turns. This statement is Defendants' Exhibit 224 (Record p. –). The variation in the production at that factory is best illustrated by the first column under the heading "Women's stitched (2 mchs.)". The maximum product was in September, 5,492 pairs. The minimum product was in May, 749 pairs. I don't assume that that is a fair comparison, but the month of April is 2,234 pairs. It shows what the extremes may be.

This statement also gives the product per month of each kind of machine. Under the heading "Heeling (2 machs.)" the high month was August, 17,235 pairs; the minimum was in May, with 252 pairs and the number in April was 7,023 pairs. The comparison with April would be a fair one as showing the extremes. I presume that the factory practically shuts down in the month of May.

This is a fair sample of the condition with which we are confronted throughout the trade. It is not a selected case. I would be quite ready to take any factory and prepare the same figures.

525 The general average of the capacity of the machines which is paid for in the way of royalties is about thirty-three per cent of the productive capacity of the machines in all departments. The difference between this general average of thirty-three per cent and a possible one hundred per cent of use is accounted for in part by the loss in productivity caused by fluctuations in the seasons and in part by the necessary margin of productivity of the equipment of a factory which must be maintained above the actual demand. My theoretical 100 per cent of productivity is the capacity of the machines in actual use under actual conditions in various parts of the country and under varying time conditions, for three hundred days. I did not take twenty-four hours a day or ten hours a day. I can't give the exact number of hours that it does cover. It is the working day, the average working portion of the day.

Q. The United States claims that the policy of the company with reference to the use of this exclusive use clause is that, unless the lessee uses all the machinery of the company exclusively, the lessor has the right to exercise its option of cancelling the lease; is that the policy of the company?

Mr. FOWLER. I wish, your honors, to make an objection to the use of the word "policy."

PUTNAM, J. I don't remember any such language in the bill. I think he ought to hold himself to the bill. What is the language of the bill, Mr. Fowler?

Mr. FOWLER. Well, it doesn't use the word "policy" at all, but just states as a matter of fact they did so.

BROWN, J. It says they conceived the idea, doesn't it?

PUTNAM, J. It seems to me, Mr. Fowler, to put it on a broader basis—in this case, what the court wants to know is, not only what the company did, but what its policy was, and not only what its policy was, but what it did. We want to know both things to understand this case properly.

BROWN, J. What the scheme was.

Mr. FOWLER. I submit it is not competent for him to testify generally as to a policy.

BROWN, J. But as to a project—you have charged in your bill that various contracts, combinations, conspiracies, and acts were steps in carrying out the above-mentioned unlawful projects. You first say they conceived an idea and then say what it was, and then you call it a project, and now Mr. Choate calls it a policy.

Mr. FOWLER. Now, may it please the court, a bill necessarily has to allege several evidential facts. Then from those evidential facts it alleges a certain policy, you might say, or proposition.

BROWN, J. The existence of a project is a fundamental, substantial fact in this case.

526 DODGE, J. When Mr. Choate asked the witness what was the policy of the company in respect to this or that, I have been understanding not only what was intended but what was done.

Mr. CHOATE. Exactly.

DODGE, J. That has been my understanding all along.

Q. Mr. Winslow, the United States charges your company with the project or purpose of requiring lessees to use your machinery exclusively at the peril of having all your machinery taken away from them, and that that is the purpose of the exclusive use clause in the leases.

PUTNAM, J. Do you find that in the bill?

Mr. CHOATE. Yes.

PUTNAM, J. Repeat the language in the bill.

Mr. CHOATE. It appears in two or three places, first, I think, on page 22:

"With the intent to acquire complete control of the business of manufacturing and selling or leasing shoe machinery among the States and with foreign countries, to exclude all others therefrom."

Then, on page 23:

"Defendants, in pursuance of their general purpose, inserted in and made a part of, each lease and license agreement, provisions reserving to themselves a right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers if the latter should fail or cease to use exclusively and to their full capacity machines leased or controlled by defendants."

A. That is not true and never has been the purpose of the company.

The purpose of the company has been nothing more than to reserve to the company the right to cancel leases of machines of a type which the lessee had ceased to use exclusively if conditions became too onerous to continue.

The right to cancel clause, for breach of a condition expressed to be obligatory upon the lessee, was adopted by the company with respect t conditions which would be such as to make the continuance c the business relations between the lessee and ourselves impossible, as where the lessee did not make proper returns
of the royalties or did not pay his royalty or refused to pay
527 the taxes—those conditions which in the ordinary business
relations between men would make the continuance of the relations impossible.

In the twelve to thirteen years prior to the beginning of this suit the United Company availed itself of the right to cancel leases and remove machinery for reasons other than bankruptcy or receivership in only five instances. These were the cases of T. D. Barry & Company, Peter Tessier & Company, E. Bottomley & Company, E. F. Bell & Company, and C. E. Ramlose. In the Ramlose case they made improper and incorrect returns of the extent of use of the machinery. Upon investigation we found that he was only reporting about half the shoes that he was making upon our machines. Also when our agent called in the middle of the month of January, 1903, there were already prepared the entire returns for the use of the machines for that month of January. After we took the matter up with Ramlose he secreted some of our machines behind a brick wall that he erected in his cellar. We replevied the machines from Ramlose.

In the Bell case the firm had obtained wire and loose nails from other parties and were using them in our machines, thereby depriving us of all royalty for the use of those machines. He had boxes containing our loose nails beside the machine, and when our agent went in there he substituted the nails of our make for those he had purchased outside. The matter was taken up with them, and the machines were not removed until after they continued to persist in this practice; then only those machines upon which they were doing that were taken out of the factory. Other metallic machines were left there.

In the Tessier case I sent the notice to Tessier myself.

528 Tessier had our machines in two departments. He had abandoned the use of our welt and turn sewing machines, and had put in their place the Duplessis turn sewing machines, and we sent him a notice cancelling our leases. As a matter of actual fact, it did not interfere with his going on with his business in the slightest degree. He simply was not using our machines, and we took them out.

The T. D. Barry & Co. case is the one Mr. Hogan testified about. The other one was the Bottomley case. Bottomley had served notice on us that he would not use our machines and would not pay any further royalty. He was using machines which he had also declined to sign the leases on. They had been leased previously to other parties. In none of these cases were any of the machines removed until after several interviews with the parties themselves and an endeavor to arrange any differences.

I have had an examination made to ascertain how many of the welting and stitching, lasting, heeling, and metallic machines, including the auxiliary machines, were out on the independent leases on January 1, 1905. There were 18,702.

On March 1, 1905, there were 1,851 welt and turn machines out, and of these, 1,798, nearly all of them, were on the independent form of lease. On March 1, 1905, we had out 1,871 stitchers, and of these 1,817 were on the independent form of lease.

The figures which I am giving for the total number of machines out are as of March 1, 1905. The figures for the machines on the untied leases are as of Jan. 1, 1905. Those are the nearest dates that we are able to get, but with that qualification these are the comparisons.

In 1905 we had out 8,129 metallic machines and 603 of these were on the independent lease.

We had 1,652 heel-attaching machines out in 1905, and of these 1,500 were on the independent lease. I am now speaking of

heel-attaching machines alone, not including the heeling department auxiliaries.

In 1905 there were 5,289 lasting machines out, and of these 1,956 were on the independent form of lease.

This makes a total of 7,674 principal machines out on untied leases on January 1, 1905.

I have also made a similar compilation as of March 1, 1911.

529 On that date there were out 5,203 of the welt and turn machines and the stitching machines. These were all on the unrestricted form of lease.

On that date there were out 15,540 auxiliary machines of the Goodyear department. None of these auxiliary machines was on a form of lease by which they were restricted to use with machines of any other department or any machines except the principal Goodyear machines.

In 1911, 7,587 principal metallic machines were out, less than in 1905. Of these 225 were on the unrestricted form of lease.

In 1911 there were 2,019 heel-attaching machines out and 415 of these were on the unrestricted form of lease. Also 514 auxiliary heeling machines were out on leases which did not restrict them to use with the machines of any other department.

There were 7,819 lasting machines out in 1911 and 1,506 of these were on unrestricted forms of lease.

The total number of machines in the Goodyear, metallic, heeling, and lasting departments, which were out on unrestricted leases in 1911, including auxiliaries, which are limited to use with the principal machines of their respective departments but are not restricted to the machines of any other department, was 23,404 out of a total number of machines in those departments of 47,985; that is, about half of the total number of machines in those departments.

Defendants' Exhibit 225 is a tabulation of the numbers of machines out on unrestricted leases on January 1, 1905, and March 1, 1911.

DEFENDANTS' EXHIBIT 225.

List of principal and auxiliary machines of the Goodyear, metallic, heeling, and lasting departments out January 1, 1905, on untied leases.

	Principal machines.	Auxiliary machines.	Total.
Welt and turn sewing machines	1,798	9,078	12,663
Outsole stitching machines	1,817		
Metallic fastening machines	603		603
Heel attaching machines	1,500	1,950	3,450
Lasting machines	1,956		1,956
	7,674	11,028	18,702

Machines of the Goodyear, metallic, heeling and lasting departments out March 1, 1911, on untied leases.

Goodyear—Principal machines	5,203
" —Auxiliary machines	15,540
Metallic—Principal machines	225
Heeling—Attaching machines	415
" —Auxiliary machines	514
Lasting	1,506
	23,403

The WITNESS. I have prepared a list of some of the concerns to whom the choice between the independent form of lease and the restricted form of lease has been offered from time to time. This list does not comprise all such concerns, but only those which readily came to mind. These concerns were as follows:

F. E. Leavitt, Haverhill, was using three Duplessis turn sewing machines and had our sewing machines. We offered him the right to return our turn machines, to cancel the leases of those machines and to take the initial-payment form of lease for his lasting, metallic, and heeling machines. He did take independent metallic leases on the initial-payment form in 1910 and retained the Duplessis machines.

F. M. Hodgdon, Haverhill, was using a Fox turn machine. We offered him the initial payment lease for such machines of our other departments as he had, but he decided not to take it, and returned the Fox machine.

W. S. Chase & Son, Haverhill, were using the Fox turn machine and the Pettengill heeler. We offered to let them return our turn machines and our heeling machines and to keep
531 the lasting and metallic machines on the independent leases, but they decided to keep our machines and gave up the use of the Fox and Pettengill machines.

Carleton & Hunt, Haverhill, were using the Fox turn machine and were offered the initial payment.

George W. Herrick Shoe Company, of Lynn, was using the Pettengill heeler and was offered the rest of the department on the initial payment plan.

Hilliard & Tabor, of Haverhill, were using the Fox turn
532 machine and the Pettengill heeler and were offered the right to keep any of our machines on the initial-payment plan.

C. H. Aborn & Company, of Lynn, using the Pettengill heeler, were offered initial-payment leases for the other departments with the right to return our heeling department machines.

L. Jacob & Company, Lynn, who were using the Rowen & Hamel turn machine were offered the initial-payment lease.

We offered the initial-payment lease to Griffin & White, of Brooklyn, who were using the Fox turn machine and the Pettengill heeler.

In 1910 we offered the independent lease for the pulling-over machine to the following concerns, who took it: N. D. Dodge & Company, Newburyport; George A. Learned, of Newburyport; Excelsior Shoe Company, of Portsmouth, Ohio; Joseph A. Schreier, Rochester, New York; Newton Shoe Company, of Newton, New Hampshire; Martin Slipper Company, Haverhill; E. E. Sullivan & Company, of Haverhill; A. Garside & Sons, New York City.

Independent leases were also offered to Ira J. Webster, Haverhill; Worcester Slipper Company, Worcester; and Charles L. Clifford, Newton, New Hampshire. The Worcester Slipper Company were offered the machines of the metallic and heeling departments on independent leases and they accepted the terms.

Referring to Plaintiff's Exhibit 163 (Record, p.—) which shows the total number of machines leased on March 1, 1911, and referring to Plaintiff's Exhibits of reports to stockholders for a series of years in which the number of machines out under lease is stated for each year, those totals in each case included all machines under lease whether leased to shoe manufacturers or not.

The total, 90,276, stated in Plaintiff's Exhibit 163, also included 28,622 general department machines, all of which could have been bought or leased, as the manufacturer preferred. It also included the following new machines, introduced since 1899: Ensign lacing machines, 633; Ideal clicking machines, 3,655. pulling-over machines and their auxiliaries, 3,627. There were also machines in the general department and in the lasting department which were entirely new and had been developed by the United Company since 1899.

533 I have prepared a table which shows the total number of machines, principal and auxiliary, of the kinds put out by the constituent companies prior to 1899 which have been put out by the United Company in each year from 1900 down to 1911. This table also includes, under separate headings, the pulling over department machines and various other machines that have been devised and brought out by the company. In this table are included all machines out on lease, whether to shoe manufacturers or others. We lease machines to harness makers, trunk makers, and in all the various trades in which eyeletting machines could be used, as in corset manufacture.

Mr. CHOATE. I want to offer that to demonstrate that the principal increase in the numbers of machines leased by the company has been due to the addition of machines which were

not in existence in 1899, and to the general department machines which had been added to the list of leased machines. The increase in the number of the original machines owned by the original constituent companies your honors will notice is not very striking.

(This table is defendants' Exhibit 226, Rec. p. —.)

534 The WITNESS. I have made a calculation to determine whether the number of machines of the kinds made by the constituent companies and now put out by the United Company has increased in proportion to the number of all shoe machines between 1899 and 1911. The ratio of the machines of the constituent companies to all shoe machines in 1899 was 26 to 138; that is, in round numbers there were 26,000 of United Company machines and 112,000 of machines of other companies, a total of 138,000 in 1899.

On the nearest date to the beginning of this suit for which I was able to make a compilation there were 41,602 machines of the Goodyear, heeling, lasting, and metallic departments, compared with 181,000 of all kinds of machines, a ratio of 41 to 181 In this comparison I did not include lasting or metallic auxiliaries, because they are more devices than machines.

In round numbers the United Company's machines in 1899 were about one in every five and a quarter, and in 1910 about one in every four and a half.

In enumerating the total number of machines I used typical factories as a basis and took all kinds of machines used in shoe factories, including general department machines and those that work on the uppers. It includes everything.

The restricted-use clause was adopted in our leases for the purpose of giving the company a proper return for the use of the machines when they were leased without initial premiums, and for that reason alone. With the terms of royalty fixed the company would not, without the initial premiums, receive a fair return for the machines unless they were used together as restricted in the leases. As a business proposition, after the initial premiums were removed, there would be no security whatever for a proper and fair return for the use of the machines without the restricted-use clause.

Defendant's Exhibit 227 (Record, p. —) is a list, as of December, 1911, of the machines which the United Company has

535 added to the general department, since 1899. There are about 170 machines on this list, which includes machines used in practically every room in the shoe factory, as the fitting room, bottoming room and finishing room.

The United Company offers these machines for sale or lease, at the option of the customer. My remembrance is that no lease was adopted until some time after we started to make general department machines but the alternative right has always existed from the beginning of making those machines down to January, 1912. Since that date we have only sold them.

The same business reasons existed after 1899, while the United Company was doing business, which I testified were the occasion for the full capacity, additional machinery and right to cancel clauses in the leases before 1899.

In regard to the "maintenance or repair" clause in the leases which purports to require the lessee to maintain the machines leased in good and efficient condition, the universal policy of the United Company has been to do through its service department all the work of maintaining the machines in proper working efficiency without charge to the lessee for the service.

Defendants' Exhibit 228 (Record, p. —) is a summary of the leased machines as of March 1, 1911, grouping the machines under the headings of the different departments. This shows the number of machines of each type comprised in a total of 90,276.

Referring to defendants' Exhibit 226 (Rec., p. —), and particularly to the figures under the heading "Lasting Department," from the date of the introduction of the No. 5 536 lasting machine it displaced the Chase, McKay & Copeland and Ideal lasting machines so rapidly that less than three years after the introduction of the machine there were 2,080 of those machines out, while the total number of the Chase, McKay & Copeland and Ideal machines was reduced about 500 in that time. That condition has continued until the present time, when there are 3,700 of the No. 5 machines out and only 744 of the Chase, McKay & Copeland and Ideal as compared with 2,100 of those machines out in 1899.

Comparing the terms on which the Chase and McKay & Copeland machines were put out before and after 1899, when the United Company was formed the rate of royalty for the Chase machine was according to the schedule on the lease of that machine, and the lease gave the lessor company the right to collect that rate, although notices had been given to the lessees temporarily reducing the royalty from the schedule rate to one-half cent. When the Chase leases were prepared, limiting their use to work done upon certain other machines, the right on the part of the company to demand the schedule rates was abandoned and the rate was permanently reduced to one-half cent. There was,

however, reserved for the benefit of lessees an alternative between the two forms of lease.

No change at all was made in the McKay & Copeland lease as used by the Consolidated & McKay Company in 1898 until 1903, when that machine was limited to use with machines of certain other departments; at that time the initial payment which has always been retained on that machine was reduced from $695 to $500 or less. The use of that machine was decreasing all the time and it was gradually becoming obsolete.

The fundamental difference between the operation of the McKay & Copeland and the No. 5 machines was the improvement of the No. 5 machine, which allowed either the right or left shoe to be operated upon without readjusting the machine, which had always been necessary in the use of the McKay & Copeland.

Of course, there were other differences.

537 I have prepared statistics showing the average daily production of lessees of the constituent companies of the United Company in 1898 and the average daily production of lessees of the United Company in 1911 and also several intervening years. This is defendants' Exhibit 229 (Record, p. ~~454~~).

In the year 1898 there were 1,060 firms manufacturing shoes which were lessees of the constituent companies of the United Company; 1,079 factories were used by those firms. Their production, based upon the average daily production during the year, was as follows:

Those averaging less than 100 pair per day	383
Those averaging between 100 and not over 200	173
Between 200 and 300	111
" 300 " 400	79
" 400 " 500	53
" 500 " 600	22
" 600 " 700	29
" 700 " 800	33
" 800 " 900	19
" 900 " 1,000	15
" 1,000 " 1,500	40
" 1,500 " 2,000	32
" 2,000 " 2,500	21
" 2,500 " 3,500	18
" 3,500 " 5,000	7
" 5,000 " 7,500	2
" 7,500 " 10,000	2

With forty idle and unknown capacity factories.

There were not any above 10,000 at that time.

In 1911 there were 1,033 firms with 1,150 factories. Their average daily production was divided as follows:

Less than 100		274
Between 100	and 200	123
" 200	" 300	98
" 300	" 400	72
" 400	" 500	69
" 500	" 600	52
" 600	" 700	40
" 700	" 800	38
" 800	" 900	44
" 900	" 1,000	34
" 1,000	" 1,500	97
" 1,500	" 2,000	52
" 2,000	" 2,500	43
" 2,500	" 3,500	37
" 3,500	" 5,000	21
" 5,000	" 7,500	14
" 7,500	" 10,000	1
" 10,000	" 15,000	1

With forty idle and unknown.

The figures in the last column show the number of factories. Defendants' Exhibit 229 shows both the number of factories and the number of firms using those factories. In all cases the smaller firms would have single factories.

Of the 1,033 lessees in 1911, it would take the output of eighty per cent of the total number of factories to amount to one-half of the output of the total number of factories; that is, beginning with the manufacturers who make 100 pairs and less, and going up to the larger factories, it would be necessary to take eighty per cent of all the factories to produce 130,000,000 pairs. The average of those factories would be 450 pairs per day; 567 out of the 1,033 firms averaged less than 170 pairs of shoes a day.

538 I am familiar with the respective capacities of the principal machines put out by our company. I have prepared a memorandum of the principal machines, including the Goodyear auxiliary machines, but not including any auxiliaries in the other departments required by factories having daily productions of 100, 150, 250, 350, and 450 pairs. This is defendants' Exhibit 230.

Mr. CHOATE. I should like to offer this computation, if the court please, bearing upon the subject of the required capacity of other shoe machinery makers of like machines to equip the great majority of the shoe factories in the country.

DEFENDANTS' EXHIBIT 230.

Memorandum of the pulling over, lasting, heeling, metallic, and Goodyear departments, and Goodyear auxiliary machines required by factories having a—

Daily production in pairs.	Pulling over.	# 5 lasters.	Welters.	Stitchers.	Heelers.	Sluggers.	Loose nailers.	Auxiliaries.	Total number such machines per factory.
100	1	1	1	1	1	1	1	16	23
150	1	2	1	1	1	1	1	16	24
250	1	2	1	1	1	1	1	16	24
350	1	3	1	1	1	1	1	16	25
450	1	4	2	2	1	1	1	16	28

The WITNESS. So far as this exhibit deals with heeling machines, metallic fastening machines, or lasting machines no more of those machines would be required in a McKay factory than in a welt factory.

I have classified under various headings the acquisitions of properties by the United Company, arranging them in eight classes.

Class 1 comprises "Purchases made after the formation of the United Company in February, 1899, and during the years 1899, 1900, and 1901 for the purpose of settling existing litigation; one in February, 1910, for the same reason; and one to avoid infringement of patents." This class comprised Goddu Sons Metal Fastening Company; Seaver Process Lasting Company; Globe Sewing Machine Company; Bay State International Shoe Machinery Company: The Wentworth Company, and Boot & Shoe Sole Laying Company.

539 I have already testified regarding the Goddu Sons Metal Fastening Company.

The Seaver Process Lasting Company was purchased in 1900 at the earnest solicitation of Mr. Seaver. At the time they were not making any money, and the company was heavily in debt to Mr. Seaver, personally.

There was litigation that existed at the time between the Consolidated & McKay Lasting Machine Company and the Seaver Company. And also the Seaver Company had patents, or applications for patents, which it was believed stood in the way of the development of the pulling-over machines which we were at work on at that time. The patents on which litigation was being conducted had been issued to the Consolidated Lasting Company in 1895 and 1898. The Seaver Company owned no real estate and they leased a room in South Street—had about six employees.

The Globe Sewing Machine Company suits for infringement of the patents of the Goodyear Company were being conducted at the time of the formation of the United Company and at the date that the United Company acquired the property of the Globe Sewing Machine Company. The purchase was not one that the United Company sought, but was made at the earnest solicitation of Mr. Mellen Bray, to whom the Globe Company owed a very large sum of money. He wanted to get rid of having anything to do with the company, and came to me personally and besought me to acquire his interest. They owned no real estate and did no manufacturing. Such as they had done they had contracted outside.

We acquired $599,210 in the nominal capital stock of the Globe Company and paid $20,000 in our preferred stock at par. That company was in debt to a very large extent to Mr. Mellen Bray, and the price paid also included that debt. I do not mean that we paid the debt beside the $20,000; that payment covered everything.

The Bay State International Shoe Machinery Company was acquired in 1901 for the account of the United Company's British and French companies. That was believed to be the cheapest way to settle and dispose of the litigation. This purchase also was made at the earnest solicitation of the people who were interested, who were also customers, shoe manufacturers, and customers of the United Company.

We got foreign patents in that purchase. The litigation was between our British company and the owners of those patents.

These acquisitions for these three years amounted to $233,000; $150,000 in 1899, $38,000 in 1900, and $45,000 in 1901.

540 The purchase of the Boot & Shoe Sole Laying Company in 1899 was made to enable the United Company to put out a sole laying machine, used in the manufacture of welt shoes that would be free from infringement of the patents of the Boot & Shoe Company, and also for the purpose of obtaining a type of machine fitted for small factories as distinguished from the large capacity machine then being built by the Goodyear Company. $45,000 was paid for that company. This amount is not included in the figure of $233,000 which I stated.

In 1910 the Wentworth Company was purchased for $60,000. That purchase was made after long litigation in the Patent Office between the United Company and the Wentworth Company and in the courts between the United-Xpedite Company, one of the United Company's subsidiaries, and the Wentworth

Company, in which a judgment had been rendered in favor of the United-Xpedite Company.

Prior to the decision of the litigation the Wentworth Company had approached the United Company many times to dispose of their business. A great many of the Wentworth machines that had been put out were in the hands of our lessees, and as the easiest way of disposing of that whole question it seemed to be better to make a trade with the Wentworth Company and settle the litigation, then to allow our lessees to use those machines.

The principal machine of the Wentworth Company was the heel seat forming machine, a machine for beating the heel seat after the shoe had been lasted. The suit brought by the United-Xpedite Company was in this district, and the decision was prior to this acquisition.

The United-Xpedite Company manufactured a heel finishing machine, used in finishing the edge of the heel after it has been attached to the shoe. As to how we acquired control of that company, the principal owner of the Xpedite Company was a lawyer in Lynn by the name of Tuttle, an old personal friend of mine. He had become paralyzed from the waist down and was unable to carry on the development of the Xpedite Company. He had advanced that company quite a large sum of money. He came to me and asked me to take control of that company and handle it, giving him, if the business was successful, the amount that he had advanced to the company. I agreed to such an arrangement, took 55 per cent of the stock for our
541 company, gave Mr. Tuttle and his people 45 per cent, and advanced the necessary money to make the business successful. The company has been made successful, as a separate organization, and Mr. Tuttle and his associates were paid back the money that they had advanced to the company.

My second class of acquisitions includes the purchases of the whole or portions of the businesses conducted by four corporations and one firm that had acted as agents for one or more of the separate companies that went into the original organization of the United Company. These were Pearson & Bennion, the Frankfurt, Germany, purchase of the Stanley Manufacturing Company, Ross-Moyer Manufacturing Company, George A. Smith Machinery Company, J. K. Krieg & Company. I have testified as to all of these.

My third class includes purchases and contracts which extended the scope of the business to include the manufacture and sale of machines of the class that have been termed general department machines. None of the machines acquired was in com-

petition with the business of the original organization of the United Company.

One of these concerns is the Ross-Moyer Manufacturing Company, which is also included under class 2. This concern manufactured edge setters, edge trimmers, heel scourers, buffing machines, and rolling machines. It owned no real estate, but leased floor space in Cincinnati, where it employed 35 men and manufactured its machines. The business had been carried on for a number of years.

This acquisition did not, in connection with what we already had, give us any power over the trade in the slightest degree. There were other manufacturers putting out machines of the same type, and at that time the United Company had no machines of that sort at all and that concern had been our agents.

The machines acquired were offered for sale to every one, through the general department. If they were taken under lease, it was really a favor to the lessee. We did not in
542 the slightest way raise any of the prices or limit the sale, suspend the manufacture of the machines, or do anything that in any way would interfere with the trade of either the shoe manufacturer or other people who manufactured the same machines. The only thing that happened regarding those machines was that we made them better than the Ross-Moyer. The trade was benefited in that respect.

The next one is the Swain-Fuller Company. They owned no real estate; they leased a small amount of floor space in Boston, employed less than ten men; by this purchase the United Company secured the single sole-molding machine and the Star leveling machine. The Star leveling machine was covered by patents and was a hand-controlled machine adapted for leveling welt or turn work and was especially adapted for use in small factories where the Goodyear automatic leveler was too large and expensive.

We did not seek the Swain-Fuller Company; they sought us.

As to the G. W. Emerson & Company; this property was acquired at the earnest solicitation of George W. Emerson, who was interested in a trout farm on Cape Cod and desired to retire from the shoe-machinery business. Purchased in December, 1902. The amount paid was based upon the inventory of the Emerson Company. The controlling reasons on our side were two: First, we desired to obtain the services of William R. Sampson, who was the active man with Emerson and who to-day occupies with our company a very prominent position, and has been with us ever since, in our employ. The second was to

compose certain litigation then pending between the Xpedite Company and the Emerson Company for infringement of the Xpedite patents. They owned no real estate; they leased two floors in a factory building in Lynn, and employed about thirty-five men. The greater part of their business was in manufacturing lasts and forms.

The T. A. Norris Machine Company had no real estate, but had a small machine shop, employing about ten men, in which they did general machine-shop work, repairing shoe machinery, and also building a few minor machines. It was really a repair shop. It was located in a building owned by T. A. Norris, in which the United Company had its Brockton headquarters and repair shop, which it leased from Norris.

543 This purchase was made upon the basis of the inventory, $11,526.78, and at the solicitation of Mr. Norris, who was heavily interested in real estate and wanted to retire from any machinery business. We wanted to increase our space in his building, and this business arrangement was made. As a matter of fact, the whole purchase only amounted to buying out some second-hand machines and machine tools.

Booth Brothers Company was a partnership composed of Quentin W. Booth and Irving E. Booth. They owned no real estate but leased floor space in Rochester, New York, and employed about twenty-two men. The purchase was made in 1907 for $71,284.20. Their principal machines were beading machines, a fudge edge machine, an impression stitch burnishing machine. Quentin W. Booth wanted to retire from business, and the company felt that it could add these particular machines to its line of machines to advantage to its customers and to itself, as an ordinary business transaction; and also utilize the services of Irving E. Booth, who was a very capable man in that line of endeavor.

The United Company formed a corporation out there. It did employ Irving E. Booth and continued the business. The Booth Company employed about twenty-two men. It varied in its number of employees. We now have employed there about twenty men.

As to the Carver Cotton Gin Company, we really got from them some jigs and tools, a small stock of parts, a few machines, all of which were in what is known as the general department. This purchase was made at the solicitation of Mr. Hobart, the treasurer of the Carver Cotton-Gin Company. The manufacture of any shoe machinery with them was entirely a side line. We didn't get the company; simply got part—a very small part. Their regular business had increased so that they had either got

to add on to their factory or else dispose of some part of their business, and this portion of their business had been decreasing, and the price paid did not really cover the value of the tools plus the parts of machines.

The machines that we got from these six concerns were added to our General Department. I have prepared a list of other manufacturers who manufacture machines which compete with those general department machines, which manufacturers are doing business and competing with them now.

Parsons Machine Company, Seelye Manufacturing Company, Tower Brothers, Quarmby & Hilliker make sole-cutting machines; Boylston Manufacturing Company, Rotary Rounder Company and the Wellman Machine Company make sole-rounding machines; Quarmby & Hilliker, Boylston Manufacturing Company, Seelye Manufacturing Company make sole-molding machines; Quarmby & Hilliker, James Busfield and Seelye Manufacturing Company make rolling machines; the American Worsted Machine Company, W. J. Young Machinery Company, James Busfield, Turner Tanning Machine Company,

American Tool & Machinery Company make splitting
544 machines; the Boylston Manufacturing Company and the
C. K. Fox interests in Haverhill, R. H. Long and the Duplessis Machine Company make leveling machines; C. K. Fox, or Haverhill Machine Company, T. F. Rowan make heel-breasting machines; Donnelly Machine Company, T. F. Rowan, Briggs-Belmer Company and Tower Brothers make edge-trimming machines; T. F. Rowan, J. G. Buzzell, Boylston Manufacturing Company and Tower Brothers make heel-scouring machines; L. G. Freeman, Boyslton Manufacturing Company Beaudry Machine Company, Quarmby & Hilliker make edge-setting machines; Donnelly Machinery Company, Tower Brothers, J. C. Buzzell, T. F. Rowan, Boyslton Manufacturing Company, Seelye Manufacturing Company make buffing machines.

The United Company has done nothing with the machines acquired from those six concerns which in any way interfered with the trade of any other people who make like machines or limited the trade of shoe manufacturers who wanted to get those machines of us or of anybody else. Up to 1911 we sold or leased those machines to anybody who wanted them. Since then we only sell them. When sold those machines might be used with the machines of anybody with which the purchaser wanted to use them. We have done nothing in the way of increasing prices, restricting the output, or stopping the manufacture of these machines.

The fourth class of acquisitions comprises purchases which extended the scope of the United Company's business to the manufacture of findings and supplies used by its customers. The names of these and the findings and supplies which were added by each acquisition are as follows:

Timothy A. Bresnahan, which is the Boston Shoe Tool Company, manufactured forepart cutters and edge irons.

The Boston Blacking Company manufactured blacking stains and cement.

BROWN, J. That is out—the Boston Blacking Company is out of the case.

Mr. GREGG. That is out.

The WITNESS. The Boston Fast Color Eyelet Company and the Enamel Eyelet Company, owned by the same people, manufactured celluloid eyelets and enamel eyelets. J. C. Rhodes & Company were eyelet manufacturers. We sell these eyelets not only to shoe manufacturers but to many other kinds of manufacturers—to anybody who want to buy them.

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We acquired from the Morley Button Manufacturing Company their eyelet business, a small part of their business, and that was to settle existing litigation. We did not acquire their button manufacturing business, which was very largely their business.

The Marlboro Awl & Needle Company manufactured awls, McKay needles, and rawhide mallets. We acquired a half interest in S. A. Felton & Sons Company, manufacturers of brushes.

As to W. W. Cross & Company, Mr. Cross had really been associated with us for years, manufacturing the tacks that we sold. That business was increasing and, as we were the only big customer that Mr. Cross had, he did not want to put in the necessary additional capital, so we became interested with him. That business then employed about 40 men and now employs 317 men.

The F. G. Farnham Brush Manufacturing Company was really purchased for the benefit of the Felton Company, because of certain patents that the Farnham Company had in connection with the art of making brushes.

The American Glue Company transaction was merely a contract, terminable on three months' notice, relating to sandpaper in the shoe trade—not in other trades.

Kimball & Hadley employed two men and two boys and made, principally, Goodyear needles and awls.

The Metallic Heel & Counter Company manufactured patented metallic heels and counters to go outside of shoes for miners'

work or heavy outdoor work of that sort. That company was acquired in connection with the purchase of the Smith Lacing Machine Company. The men who were interested in that company—particularly two of them—were men whom we used in our own business and consulted as experts. One of them was Mr. Warren. They had produced the Smith lacing machine, the
546 first machine for lacing shoes preparatory to the lasting operation, which had always been done previously by hand. When we acquired that machine they wanted us to take over their whole enterprise, including the Heel & Counter Company, which was really the machine shop. They owned no real estate but they had a machine shop on Purchase Street, in Boston. From that purchase we developed the lacing machine, until today it is used in nearly every factory where they manufacture lace shoes.

The Ellis Lacer Company manufactured wire lacers for temporarily securing the eyeleted edges of shoes. They were at that time infringing patents controlled by the United Company. As a result of discussion between the owners of the Ellis Company and our company we agreed to buy it rather than start any litigation. The sale was agreeable to both parties and was for no other reason except to avoid litigation.

The B. F. Sturtevant Company was manufacturing peg wood and wood shanks. Peg wood was used in our pegging machines and was sold to shoe manufacturers, and we were handling shanks and wanted a factory to make the peg wood and shanks.

These are a dozen or more instances of concerns bought to enable us to supply findings or supplies to our customers. We did not suppress the manufacture of any of these and continued to furnish all of them to customers, to anybody who wanted them. We did nothing to restrict the use or to raise the prices. When any changes in prices were made they were always lowered. These things were all added to our general department and sold and we did not interfere in any way with the trade of others in like things.

Some of these concerns were large, like J. C. Rhodes & Company, but most of them were small. For illustration, we continued to sell eyelets at the same prices at which they had been sold by the Rhodes Company and in addition furnished the eyeleting machines in which the eyelets were used without charge to our customers, with no increase whatever in the prices; but the eyelets were sold to anyone, whether they used our machines or not.

547 My fifth class includes the purchase of patents and royalty contracts to manufacture under patents. These include Breach Manufacturing Company, E. T. Freeman, A. G. Brewer, Winkley & Phillips, W. J. Young, Joseph P. Curtis, Arnold Machine & Supply Company, Leopold J. Courteau, Booth Brothers' 1904 contract, relating to a patent on a perforating machine, Beaudry patents, relating to heel-finishing machine, Harry L. Rice and Fred La Chapelle.

Class 6, comprising payments made to commute obligations existing prior to 1899 under royalty contracts for the right to manufacture under patents, and to cancel the obligation between the Goodyear Company and the Lincoln Sewing Machine Company, includes the Lincoln Sewing Machine Company and Zachary T. French.

Class 7 comprises employment contracts and includes Peter A. Coupal and William Gordon, George W. Freeman, Fred H. Perry, Joseph W. Leary, and John H. Richardson.

Class 8 comprises miscellaneous contracts which do not come strictly under any of the other classes.

The Corrugated Wire Fastening Company was purchased in 1899 for $12,750 at the earnest solicitation of the owners, their business having become unprofitable. At the price we paid we thought we could get out of it with a small profit.

This class also included the American Sole Laying Machine Company, John Ritchie, Oliver A. Miller, Brockton Supply Company, Smith Lacing Machine Company, already referred to, Richardson Shoe Machinery Company.

An example of these acquisitions is the Oliver A. Miller business. Mr. Miller was carrying on business in Brockton manufacturing treeing machines known as the Miller treeing machine, and the tree feet and tree legs used on that machine. They are used in the finishing room of the shoe factory in finally dressing shoes before they are packed. Most every manufacturer making good shoes has them.

548 Mr. Miller, I think, had gotten into financial difficulties; at any rate, he came to us and wanted to dispose of the business. We had no such machines. We were not in competition, not in the slightest degree. The reputation of the Miller machines and the Miller business was high, and we found that we could secure the manager of that business, who had been with Mr. Miller for a great many years, to continue as manager for us, and we finally accepted the company and continued that business.

We have not restricted or suppressed this business in the slightest way. We have done nothing since acquiring the busi-

ness to interfere with the trade of other people and we did not raise the prices. We offer the machines for sale or lease to our customers, as they wish, and the business has increased. At the time of the purchase Miller employed about sixty-five men. The Miller Company employed about one hundred and twenty-five men, nearly twice as many, when this suit was begun. We supply the machines to anybody that wants them.

Mr. CHOATE. I would like to put this memorandum in as a summary of what Mr. Winslow has said on these things.

("Acquisitions by United Shoe Machinery Company, 1899–1910" is Defendants' Exhibit 231, Record, p. —.)

The WITNESS. We carry a large stock of machines and parts and everything else at our Beverly factory, and also a stock of most of these things in each of our eighteen branch offices throughout the country. We have no general shop where we exhibit them but we have a large office force occupying a large amount of room in the Albany Building on Lincoln and Kneeland Streets, and we have there a large corps of men whose entire duty is to meet the trade and discuss their orders with them.

BROWN, J. I understand in each of these purchases you left outstanding competitors?

The WITNESS. Yes, sir; I recall none to which that statement does not apply. I would like to say that we have been asked repeatedly to manufacture lasts—go into the last manufacture—and it is now contemplated by the company to do that, because our customers have acquired a very great confidence in our ability to serve them with anything that they use in their factories, and much better in many cases than those who have been conducting the business.

549 I have had prepared a list entitled "Machine operations performed in the manufacture of all kinds of boots and shoes and machines offered by machinery manufacturers for performing those operations."

Mr. CHOATE. I should like to put this paper in.

Mr. FOWLER. Then, your honors, I will object to all portions of it except those portions which show the manufacturers of the machines that are in controversy in the case.

BROWN, J. You get back now to the scope of your original bill.

Mr. FOWLER. Well, we have been there all the time, your honor, as we understand it.

BROWN, J. You opened up the case; Mr. Choate has put in a lot of evidence which meets the general allegations of the bill, or directed to the general allegations of the bill. This is the same sort of thing.

Mr. FOWLER. My recollection is that in the development of our evidence we only introduce evidence going to these particular machines that are really in controversy.

BROWN, J. Well, Judge Dodge made the suggestion yesterday as to the propriety of amending the bill.

Mr. FOWLER. Mr. Gregg and myself have considered to some extent that question, and we are going to consider it a little further. I think we will make the amendment suggested. It hasn't been done yet, however.

BROWN, J. So long as the bill stands on the entire shoe machinery business, so long may the defendant put in evidence on that, unless the case is in some way reduced by your authority and consent of the other side.

Mr. FOWLER. I think that when the bill is read as a whole it does not embrace all classes of shoe machinery, and in addition to that Mr. Gregg expressly stated yesterday the classes that it did embrace, and also stated in his opening statement, at the beginning of the taking of testimony, what it embraced.

BROWN, J. Shall it be in subject to your objection on final argument?

Mr. FOWLER. That is all right.

(This list is defendants' Exhibit 232, Record, p. —.)

(Examination of Mr. Winslow suspended at request of counsel for defendants.)

550

DECEMBER 4, 1913.

ELMER P. HOWE, witness for defendants:

I am a member of the bar of the State Supreme Court, of this court, and of the Supreme Court of the United States. I have been practising since early in 1878. My practice has comprised patent law principally and corporation law to some extent.

I became counsel for the Goodyear Shoe Machinery Company in 1878 or early in 1879. I became a director and vice president of the company about 1890.

The management of the Goodyear Company fell very largely upon me because the directors of the company all lived in New York or its vicinity and we held our directors' meetings in New York. Consequently I had to do a large portion of the work that would have been performed by the president if he had been in Boston. At the same time I was conducting my law practice independently of the Goodyear Company's affairs.

A very few months before the formation of the United Company the manager of the Goodyear Company had resigned and left the company and a new manager, Frederick G. King, who was formerly in the thread business, was put in as treasurer and

general manager. He was familiar with the shoe machinery business only as he was familiar with selling thread for shoe machines.

The resignation of the former manager and putting in of Mr. King had thrown slightly more responsibility upon me than I had had before in connection with the company. I was not desirous of carrying that responsibility.

In regard to the McKay Company, I knew Mr. Brooks, the nominal head of that business, and saw him very frequently socially, so that I knew that he was anxious to retire from the business and spend all his time at his country home at Petersham. He must have been seventy then and came down from Petersham only one or two days a week.

551 I had three shares in the Goodyear Company out of 120,000 and that was the extent of my holdings in the Goodyear Company.

The Goodyear Company of Canada was a New Jersey corporation but did business only in Canada. It was entirely independent of the Goodyear Shoe Machinery Company, which owned none of its stock.

The Goodyear Company of Canada did business under Canadian patents. Early in the history of the Goodyear Company the principal patents were controlled by Charles Goodyear and the corresponding Canadian and European patents were his personal property.

With the Canadian patents as a basis he organized a company which subsequently became the Goodyear Shoe Machinery Company of Canada, and that company was doing a business in Canada under Canadian patents entirely independent of that of the Goodyear Company proper. It had no United States patents.

The Goodyear International Shoe Machinery Company was formed as a compromise of claims of the Goodyear Company and Charles Goodyear as to the title to the European patents. Charles Goodyear and his friends took half the stock and the Goodyear Company took the other half. In the development of the business of the International Company it needed much more money and treasury stock was acquired by the Goodyear Company. The business of the International Goodyear Company was in Europe and it had no patents in this country and could do no business here. At the time of the organization of the United Company the Goodyear Company owned a majority of the stock and Charles Goodyear and his associates the minority of the stock of the International Company. The Good-

year Company and the International Company were in no way in competition.

Prior to 1899 the machines of the Goodyear Company were leased in all cases and never sold. Just prior to 1899 it was making and leasing the welt and turn sewing machine with two or three auxiliary machines which constituted what is called its turn set. It was also making an outsole stitcher and
552 a long line of auxiliary machines, ten or twelve, which were leased as its full set for making a welt shoe. When I became connected with the company it had a welt and turn sewing machine for making turn shoes, a welt sewing machine and outsole stitcher, and an insole channeler and an outsole channeler to prepare the work for those sewing machines, a bobbin winder and a welt beveler, as auxiliary machines.

About 1894 or 1895 the Goodyear Company took from Mr. Winkley and Mr. Benjamin Phillips, under contract to pay royalty on each machine, what they called an automatic leveling machine, which pressed the outsole to conform it to the bottom of the last by a roller which exactly imitated the method of a hand workman. All the motions were performed automatically by the machine, so that it was only necessary for the attendant to put a shoe into the machine and to take it out after the machine had leveled it. A good deal of experimentation was necessary and the machine had to be rebuilt three or four times before it was adapted to do work on all classes of men's and women's Goodyear welts.

The company found that to sell that machine at a price that would in any way reimburse it for its expenditure and enable it to make a profit, it would be necessary to make the price so large that no shoe manufacturer, or at any rate none but the very largest manufacturers, would buy it. After discussion of the question as to how to market the machine, it was decided to add it to our full set lease with an initial premium of $500 and no royalty. Our line of important large auxiliary machines began with that.

The Hadaway stitch separator came along at about the same time. That was also put upon the full set lease at an initial premium but with no additional royalty. Other improved auxiliary machines came along afterwards.

The Goodyear Company restricted these auxiliary machines for use on shoes which were to be or had been sewed and
553 stitched on its welt and turn machine and its outsole stitcher. That was the company's invariable practice and it never leased or sold auxiliary machines on other terms.

The royalty received by the Goodyear Company was all measured by the welter and stitcher. We had indicators on them which showed how many stitches were made by those machines. We could never tell how much an auxiliary machine was used. Therefore we really charged a royalty on the welter and stitcher, although if anybody had used auxiliary machines in contravention of the terms of the lease and we found it out, we should have charged the full royalty, a right given us by the lease.

A person who had the welter or stitcher was not required to take any of the auxiliaries and he could use other auxiliaries instead of the Goodyear with our welter and stitcher if he wanted to; or he could use some and also some of ours. If he took our auxiliaries he was restricted to using them on shoes welted and stitched on our principal machines.

Before 1899 the Goodyear Company charged an initial premium of $300 for each of the principal machines and additional amounts for the auxiliaries. The automatic leveler was a big machine and the $500 initial premium on that machine did not reimburse us for the iron and the work in the machine and for installing it and for teaching operators. It simply went a part way toward that.

The Goodyear Company charged a royalty for its welter and stitcher on men's shoes of eight cents a pair, subject to a discount of fifty per cent—four cents net if it was paid promptly. I think the royalty on women's shoes was three cents net. On children's shoes it was originally two cents, but we reduced the royalty on children's shoes to one cent net and provided in our lease that the lessee should not lease turn shoe machinery of anybody but us.

The royalty on the turn set must have been two cents net on men's, a cent and a half on women's and a cent on children's.

I was familiar with the Eppler machines. They did not and could not make a Goodyear welt shoe because of the con-
554 struction of the machines, which was different from the Goodyear machines. The inseam of the Eppler welt shoe was sewed with a chain stitch, the chain of which was located in the channel of the insole, which in the wear of the shoe comes next to the foot. In the Goodyear welt shoe the chain is on the welt, outside of the shoe. That distinction involves a different machine.

The Eppler machine could not make turn shoes successfully or commercially because of this very method of operation. In a turn shoe that bulky chain would show on the sole, which is

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necessarily thin because the shoe has to be turned the other side out after sewing. That seam would also make a ridge on the bottom of a turn shoe so that it would be unsalable and unwearable.

The Goodyear welt and turn machine could be used to make either welts or turns. It was only necessary to take off the welt guide to adapt it for turn shoes.

The Eppler machine was never designed to sew turn shoes and never did; they had no need of any such adjustments and I am not aware that there were any on the machine.

There was extensive litigation because the Goodyear Company and the Eppler Company prior to 1899. I conducted it for the Goodyear Company. Broadly speaking the outsole stitcher and such auxiliary machines as the Eppler Company made and tried to lease infringed patents owned by the Goodyear Company. The testimony was taken in the cases but they were never argued because they were pending when the United Company acquired the Eppler Company.

That litigation was conducted for the Eppler Company by James J. Storrow, jr.

As to the prospects of the ultimate result, on my side I thought we should succeed in all our cases. I think Mr. Storrow was not at all confident of winning for the defendant.

The royalties charged by the Eppler Company were exactly the same as those of the Goodyear Company; but I learned that a rebate or discount was given to Mr. Keith, a very large shoe manufacturer who was president of that company, and in
555 one or two other cases. Such a discount was the exception, and it was written in their leases.

Q. Was that the exception, or was it the rule?

A. It was the exception, and it was written in their leases. I was told by Mr. Keith that the reason for granting that rebate was their failure to produce satisfactory auxiliary machines, particularly a machine doing the work of the Goodyear stitch pricker.

Mr. FOWLER. I didn't get that.

The WITNESS. I said one reason that the Eppler Company gave this rebate to certain of its lessees was because they had not succeeded in producing satisfactory auxiliary machines, notably the stitch pricker.

Mr. FOWLER. I believe Mr. Howe was testifying as to what he was told by Mr. Keith.

The WITNESS. I said Mr. Keith also told me that.

Mr. FOWLER. I wanted to object to that, because I think that is secondary testimony.

Mr. CHOATE. Well, so far as you object to anything that Mr. Keith told him, I agree it may go out.

The WITNESS. I examined the Eppler stitch separator carefully for the purpose of the infringement suit. It was very much inferior to the Goodyear's Company machine, and all the virtue it had was in so far as it involved inventions owned by the Goodyear Company.

Referring to the docket, suit No. 806, Hadaway et al. v. Charles A. Eaton, was a suit in which the et al. was the Goodyear Company, Hadaway being joined as coplaintiff because the Goodyear Company had a license from him. The defendant Eaton, a shoe manufacturer, used a machine made by the Eppler Company.

556 The bill was filed on November 20, 1896, but the docket does not say what patent the suit was on. The suit continued along until October, 1898, and on December 13 a motion to assign time for taking evidence was filed. Then the suit was dismissed by consent, at the October term of 1905.

The next case, docket 807, was another suit by the Goodyear Company against Eaton for using an Eppler machine. The bill was filed November 20, 1896. That suit was on account of infringement by use of the rounding and channeling machine made and leased to the defendant by the Eppler Company and the Eppler Company undertook defense of that suit.

Docket 1007 was a suit by the Goodyear Company against the Eppler Welt Machine Company, bill filed March 26, 1897, answer and replication filed and no further proceedings taken.

On April 11, 1892, the Goodyear Company brought suit in this district against the Eppler Company charging infringement by manufacture of the welt sewing machine of that company.

On January 2, 1897, the Goodyear Company and Hadaway brought suit against Stacey, Adams & Company for the use of the Eppler stitch separator and that suit was defended by the Eppler Company.

557 March 26, 1898, the Goodyear Company brought another suit against the Eppler Welt Machine Company for infringement by manufacture and leasing the Eppler welt beater.

January 28, 1897, the Goodyear Company brought suit against George E. Keith, of Brockton, for infringement of a patent for an improvement in shuttles, embodied in a stitcher made and leased to the defendant by the Eppler Company. On the same date the Goodyear Company brought suit against Moses Arnold & Company in this district charging infringement of the same patent. Both these suits were defended by the Eppler Company. These are all the suits that I find in the docket.

The taking of testimony had been abandoned when the United Company acquired the Eppler Company, and these suits were all dismissed in November, 1905, on a general call of the docket under the order of the Court of October 5, 1905, dismissing all cases in which nothing had been done.

(Examination of Mr. Howe suspended by agreement of counsel.)

DECEMBER 5, 1913.

SIDNEY W. WINSLOW, witness for defendants, (resumed):

I have had prepared a partial list of the concerns engaged in shoe machinery or related lines of business which have been offered either directly or indirectly for sale to the United Company but none of which has been acquired by the United Company. There are between seventy-five and eighty concerns ~~on~~ on the list, which is defendants' Exhibit 233 (Record, p. —).

Broadly speaking, this list includes manufacturers who, taken together, were making, or are now making, I should say, a complete line of shoe machinery, including the sewing machines for the fitting room. There may be certain machines for performing certain operations which are not included here, but I think that the list would probably cover all the machines that we make and probably some that we do not, besides the fitting room machines.

558 The list includes the Wheeler & Wilson Company, whose machines were used to the extent of about ninety per cent in the fitting-room department.

Of these concerns the Acme Heel Protector and Manufacturing Company made a heel-protecting machine; the Alliance Shoe Machinery Company made metallic machines, a welt machine, and a sole-laying machine; the American Glue Company wanted us to take over their molded sandpaper business, which is a part that especially applies to shoemaking and does not include their entire business; the American Shoe Machinery & Tool Company is doing business in shoe findings, just what I don't remember at the moment, but I think it included shoe shanks, which is the reinforcement under the instep; the Automatic Wetter-up Company made machines for wetting the soles—that is, putting the soles in temper, which has to be done before the sole is attached to the upper; the Atlas Tack Company, which was controlled by H. H. Rogers, is the largest manufacturer of tacks in this country, and also has a very large production of eyelets—the tacks made by this company include shoe tacks, and other tacks as well, and eyelets of all kinds; the American Shoe Findings Company have quite an extensive business in a limited line of

specialties made in the manufacture of shoes, including shanks; I don't recall for the moment the nature of R. S. Beach's business; Zotique Beaudry was, and is today, a manufacturer of edge setters; the Boston Last Company manufactured an electrical heating appliance for use in connection with drying the toes of shoes; H. E. Britton made handles for shoe knives; the Brockton Mallet Company made mallets and a line of goods similar to the United Awl & Needle Company; the Bresnahan Levelling Machine Company made leveling machines, lasts, and forms; the Boylston Manufacturing Company was the same company described by witnesses for petitioner; Callahan had machinery for making stitchdown shoes; the Campbello Shank Company made shanks; the Canadian Shoe Machinery
559 Company made a general line of machines, including welters and stitchers, in fact, a full line of what is termed here the important machines; they were established in the Dominion of Canada and were doing business here through the Duplessis Company; the Champion shoe Machinery Company is located in St. Louis and makes harness machinery and some metallic machinery, including machines like our stitcher for harness work and like our metallic machines; George H. Clark was attempting to develop a machine for lasting stitchdown shoes; F. W. Colburn was a manufacturer of handles for cutting knives and that sort of thing; Henry Coldbath, of Lynn, was a dealer in secondhand machinery and in shoe findings and in the general line of goods used by shoe manufacturers; David Cummings and W. D. Brackett had a heel-trimming machine; Denslinger & Company had edge-trimming, buffing, and finishing machines; E. L. Dunbar manufactured wood heels, which are used very extensively on turn shoes; the Duplessis Shoe Machinery Company is the one testified about by witnesses for petitioner; the Eaton & Holbrook Heel Burnishing Machine Company made heel-burnishing machines similar to the Xpedite; the Empire Sole Laying Company was the company that afterwards became a part of the Alliance Shoe Company, but was offered to us as a separate concern at the time; the Essex Machine Company manufactures shoe machinery and was developing a clicking machine, I don't remember what else at the moment; the Excelsior Slugger & Tacker Company, which had machines such as their name implies, was offered to us as a separate concern, but afterwards became a part of the Alliance Shoe Company; the Flagg Manufacturing Company, the Globe Buffer Company, and the Union Edge Setting Company were all enterprises conducted by Dr. Flagg in Boston, and made buffing machines, edge set-

ters, and scouring machines—a general line of machines; W. R. Forsyth & Company manufactured blocks and boards used in dying out or dinking machines or clicking machines; Charles K. Fox, whose business has now been transferred to the Haverhill Machinery Company, manufactured turn machines, 560 leveling machines, and the line of machines now made by the Haverhill Company; William E. Frame manufactured hand impression wheels that are used in finishing the outer edge of the sole; William E. Frechette and the Frechette Pegging Machine Company had a pegging machine, for the same work that the Davey pegging machine does, manufactured in this country and in Canada; I have already mentioned the Globe Buffer Company; Hargraves Hook Machinery & Eyelet Company manufactured a machine for setting the lacing hooks for men's shoes; the machine of the Harlow Heel Finishing Machine Company is similar to the Xpedite machine; T. F. Hart manufactured machinery for the fitting room, the room that makes the uppers; J. S. Holt & Company had a general line of general department machines similar to the machines of our general department; I have already mentioned the Haverhill Shoe Machinery Company; the Haverhill Channeling Machine Company was part of the Haverhill Machine Company, started as a separate concern; the Improved Welt Machine Company started as a company to manufacture the welt sewing machine and later went into the Alliance Company; Irving L. Keith manufactured shoe tacks, nails, and a line of findings; the Krentler-Pym Lasting Machine Company manufactured a lasting machine and some other machines which I don't recall at the moment; Keighley Company, Incorporated, have an inseam trimmer and quite a line of other machines that it advertises, the names of which I don't recall; Lacene Manufacturing Company manufacture an evening and grading machine for reducing the outersole to the proper thickness with the least removal of the leather, a machine which they get a royalty on, and they are the only concern that manufactures it in the country; the Larsen Machine Company manufacture a sewing machine for soles and sewing shoes together; R. H. Long Machinery Company has been described; the machines of the McDowell Shoe Machinery Company are heel shaving, slugging, loose nailing, and burnishing, heel 561 breasting, and blacking machines; the Morley Button Sewing Machine Company manufactured a machine for sewing buttons to shoes and finally sold out to the Singer Manufacturing Company; McNalley & Dougherty manufacture a heel breast scouring machine; the Union lock stitch machine of the

Merrick Company we have already had testimony about; the North American Chemical Company makes material which is placed between the innersole and outersole in Goodyear welt shoes; Henry Parsons manufactures a line of dying out machines—sole-cutting machines, etc.—the business was conducted by the clerk of this court; Peck Lacing Hook Company, machines for making and setting lacing hooks and for making shoe shanks; Peckham Manufacturing Company was a shank manufacturing company—there are several different kinds of shanks, steel, wood, and a combination of steel, wood, and leatherboard; Peterboro Shank Company manufactured shanks and the leatherboard out of which shanks are made; Pettengill Heeling Machine Company, when it was separate, made its heeling machine, which is now the heeling machine of the Haverhill Machine Company; Potter Shank Company, a machine for making shoe shanks of all kinds; Shawmut Machinery Company manufacture a strap covering and stamping machine for covering the straps used in men's shoes; George Shipman, eyeleting machinery; I don't remember and haven't any memoranda as to just what was made by the Specialty Shoe Machinery & Tool Company; Standard Button Works manufactured shoe buttons and machinery for making them; the George H. Stevens Shank Company were shank manufacturers; Edward B. Stimpson, eyeleting and lacing hook machines, perforating, vamp skiving, leather stripping, counter skiving, embossing, sole stamping, and stapling machines; the Stanley Manufacturing Company, the successor of the McKay Sewing Machine Company, manufactured the McKay sewing machine and a general line of what is termed the general department shoe machinery; the McKay sewing machine was a machine for uniting the soles of McKay shoes to the
562 uppers, and the Stanley Company carried on the business originally established by Gordon McKay; Tenney manufactured shoe mallets; the Tyler Shank Company manufactured shanks; Tripp Giant Levelling Company made the Tripp Giant leveling machine, and also a line of general department machines; the Union Shank Company made shanks; Vose Machinery Company made heel and edge trimming machines; H. A. Webster made leveling machines; the Wheeler & Wilson Company *Company* manufactured a full line of sewing machines used in the fitting room, where the uppers are put together, and their machines were almost universally used when the United Company was formed and for several years afterwards; this company was finally acquired by the Singer Sewing Machine Company and the machines are now sold by that company; H. A. Wheeler, upper cementing and tape cementing machinery; I can't give

information about Wolfe heel-building machine other than the description in its name, as I don't remember it.

I should state offhand that in the ordinary shoe factory there are in the fitting room as many machines in number as there are in all the rest of the factory together; that is, about half of all the machines in the ordinary factory would be machines for making the uppers. I should be glad to verify this.

I have had prepared a list of eyelet manufacturers in 1901 and 1913. This is defendants' Exhibit 234, in which the figures at the right indicate the outputs of the concerns in millions per month.

563 DEFENDANTS' EXHIBIT 234.

Eyelet manufacturers in 1913.	Shoe eyelets.	Other eyelets.
Hughes Eyelet Co., Taunton	20	....
Caseley-Nelmes, Taunton	....	60
Scoville Manufacturing Co., Taunton	2	80
Atlas Tack Co., Fairhaven	200	....
R. N. Bassett & Co., Derby, Conn	....	60
Waterbury Brass Co., Waterbury	5	75
Waterbury Manufacturing Co., Waterbury	....	10
American Ring Co., Waterbury	....	10
Rome Brass Works, Rome, N. Y	....	25
Schwarze & Hahne, Haan, Germany, importers	....	....
	227	320
S. O. & C., Ansonia	200	125
J. C. Rhodes Co., New Bedford	200	20
Rimmon Eyelet Co., Seymour, Conn	5	60
United Fast Color Eyelet Co	30	2
	435	207

NOTE.—Output is given in millions per month.

Eyelet manufacturers in 1901.	Shoe eyelets.	Other eyelets.
Excelsior Needle Co., Torrington	20	....
Scoville Manufacturing Co., Waterbury	10	40
Waterbury Brass Co., Waterbury	10	40
American Ring Co., Waterbury	10	5
Rome Brass Works, Rome, N. Y	....	5
Marley Button Co., Portsmouth, N. H	20	....
Rimmon Eyelet Co., Seymour, Conn	30	30
Southington Eyelet Co., Waterbury	....	....
Brook Co., Waterbury	20	50
Precision Eyelet Co., Bridgewater	5	....
	125	170
564 S. O. & C. Co., Ansonia	125	150
J. C. Rhodes	175	15
United Fast Color Eyelet Co	40	....
	340	165

The WITNESS. Of these concerns the United Company ~~owners~~ has an interest in the S. O. & C. Co., J. C. Rhodes Company, Rimmon Eyelet Company, and United Fast Color Eyelet Company. The Hughes Eyelet Company is owned by me individually.

If there was any difference between 1913 and 1911, when this suit was begun, as regards either the companies or their outputs, I will have the exhibit corrected.

I have had compiled a list of all the operations that are performed in a typical factory in the manufacture of standard screwed, loose nailed, men's McKays, women's McKays, men's welts, women's welts, and women's turns, including the operations performed by machines other than those made by the United Company as well as those made by the United Company, enumerating the machines for performing the operations and stating the names of the concerns, including the United Company, which furnish the machines for each operation. This list gives the machine for each operation. It includes the fitting room machinery which we don't furnish.

It gives the name of each operation in the manufacture of that particular kind of shoe which is referred to and the names of those companies from whom the machines can be obtained for performing that operation. It shows the work being done in parallel lines; in other words, from that list you would know where to go to obtain the complete equipment for a factory to manufacture any particular type of shoe named there.

This list is defendants' Exhibit 235 (Record, p. —).

To illustrate the proportion in which the United Company equips the ordinary factory, I had counted all the machines in the factory of Jonathan Brown & Sons, of Salem, Massachusetts,

565 and defendants' exhibit 236 (Record, p. —) is a list of all the machines in that factory. They make women's, misses', and children's McKay sewed shoes, and that factory is fairly typical of those factories which make the kind of shoe made in the largest number in the United States. My only reason for going to that factory was that I knew Mr. Brown very well and felt at liberty to ask him to make an inventory of all the machines in his factory. In this exhibit the machines obtained from the United Company are indicated by "United" opposite the name. The total of all the machines in that factory is 424 and the total of all the machines obtained from the United Company, including both sold and leased machines, is 128. Of those 128 machines, 64 are machines which are leased only, and the rest are general department machines, which the company

sells. Assuming that the general department machines are like wheelbarrows, i. e., can be obtained of somebody else, it makes 64 United machines to 360 of others. There is no special reason why he should have obtained from us the other machines of the 128, except the matter of convenience.

I have had prepared a statement showing the shipments of Goodyear welt and turn machines from our factory and the returns of those machines to our factory between March 1, 1905, and March 1, 1911, which illustrates the constant flowing in and out of the machines. This is defendants' Exhibit 237 (Record, p. —).

These shipments and returns may result from the substitution of new model machines for old machines, or from returns of machines from men who have gone out of business, or from shipments of machines to new factories. There is nothing in the exhibit to indicate whether the shipments and returns are the ordinary inflow and outflow of the machines in the ordinary course of business or whether they represent the substitution of new machines for old, but, in fact, they are based to a large extent upon the introduction of new and improved machines.

From Mar. 1, 1905, to Mar. 1, 1911, there were shipped out 2,194 Goodyear welt and turn sewing machines and during the same time 1,387 were returned. From Mar. 1, 1910, to Mar. 1, 1911, there were 530 machines shipped out and 436 returned. (This implies making a new lease nearly every time a machine goes out.)

566 To illustrate the extent to which, in this movement of machines in and out, customers take independent leases or leases in the restricted form, I have had prepared statistics showing the number of hand-method McKay lasting machines taken by customers on independent leases and the number taken on the restricted form of lease during each year since 1899. This is defendants' Exhibit 238 (Record, p. —) which shows that lessees elected to take those machines between March 1, 1899, and December 31, 1911, as follows:

March 1, 1899, to December 31, 1899, independent lease 185, restricted lease 250; in 1900, independent lease 65, restricted lease 283; in 1901, independent lease 143, restricted lease 415; in 1902, independent lease 115, restricted lease 425; in 1903, independent lease 72, restricted lease 385; in 1904, independent lease 54, restricted lease 233; in 1906, independent lease 59 restricted lease 293; in 1907, independent lease 36, restricted lease 247; in 1908, independent lease 47, restricted lease 159; in 1909, independent lease 54, restricted lease 169; in 1910,

independent lease 21, restricted lease 200; in 1911, independent lease 18, restricted lease 214.

As an illustration of the reductions made in prices of articles furnished by the United Company, I have had compiled the reductions made in the prices of the forepart and edge cutters acquired from the Boston Shoe Tool Company and the Globe Shoe Tool Company (defendants' Exhibit 239, Record, p. —). The prices sharged by those companies compared with prices subsequently charged by us are as follows:

The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge
567 irons in January, 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents.

The company that manufactured shoes, in which Mr. Plant was interested, was the Thomas G. Plant Company and it was located in Jamaica Plain. That company manufactured approximately 12,000 pairs a day about 1910, comprising women's Goodyear welt, McKay sewed and turn shoes.

Prior to 1910 we had supplied machines to the Thomas G. Plant Company. Just prior to May, 1910, we received notice with respect to a discontinuance of the use of those machines. Shortly after that I received a communication from Mr. Plant through Mr. Henry B. Endicott, who is the head of the Endicott, Johnson Shoe Company, which I believe is the largest manufacturer of shoes in the world. The company's factories are in Endicott, New York, and Mr. Endicott's office is in Boston.

I met Mr. Endicott in the South Station as I was starting for New York to attend the annual meeting of our company. He then suggested that I communicate with him when I got back, which I did. He came over to my office and invited me to a conference at his house in Dedham to meet Mr. Plant to discuss the sale of the Plant machinery to our company.

I went to Mr. Endicott's house with him and met Mr. Plant there. This was in June, 1910.

568 Mr. Plant started in to talk about the merits of the whole line of machines that he claimed to have, and described it as a proposition that he would like to dispose of. The substance of the conversation was that he had spent a great deal of time and money, and that his machines were wonderful

machines, much better than ours, and of course very valuable. I told Mr. Plant that I should be very glad to acquire his patents if he had the valuable improvements and inventions that he claimed to have; but, of course, I could have no opinion regarding the value of his machines unless I had my experts examine them. I left with the understanding that I was to hear from Mr. Plant whether he would allow my experts to examine the machines, and I was to decide upon those experts and furnish their names.

I did not hear from Mr. Plant, and on June 23d I called up Mr. Endicott, having previously, on June 18th, given him the names of the experts that I wanted to see the machines. I did not hear from Mr. Endicott, and I called him up to see if Plant had decided what he wanted to do.

I understood at the previous interview that he was to consult his attorneys in New York about our experts examining the machines. He did not agree to the examination by our experts, and suggested that I ought to give him some paper securing him against patent suits. There were no patent suits pending at that time; but at the previous conversation there was a question as to whether we ought to see his machines in view of the fact that we might bring patent suits.

Mr. Endicott, in answer to my call, did not call me up from his office, but apparently called me from a place where Mr. Plant was present. I say that because I could hear him turn and speak to Mr. Plant. I assume he repeated what I said, and then gave me the answer as being Mr. Plant's. At that conversation Mr. Endicott said: "What about the price?"

569 At the first interview Mr. Plant had said that his price was six million dollars, and then there was some talk about its going up if we didn't trade right away. I believe it was to go up five hundred thousand dollars a week. I had told Mr. Plant that the price had nothing to do with it; I didn't care whether he had spent six million dollars or six dollars; it was the value of the patents to our customers and the trade, the art of making shoes, that I was interested in, and when I could know what he had, why, then I could know what I thought they were worth to me.

In answer to Endicott's suggestion, "What about the price?" I told him I didn't see what that had to do with it. This was over the phone. I suggested that Mr. Whipple, who was acting at that time for Mr. Plant, and Mr. Fish should act together and agree upon any paper regarding the suits, if it seemed to be proper. The substance of what we were discussing was that any knowledge that was obtained by our men should not be used to

either annoy or arrest Mr. Plant by patent suits. That suggestion of mine did not seem to be satisfactory, and Plant, in reply to my suggestion that the price had nothing to do with it, said it had everything to do with it. As the result of that, and because I didn't so understand the matter, I suggested that we meet, and we did meet on the 23d of June at the Parker House, Mr. Endicott being present, and Mr. Plant at that interview stated that the time he had given me to consider the matter would expire that Saturday night following. I haven't the date. The time he spoke of was, I suppose, in connection with the price which he had asked.

During these negotiations nothing except Plant's inventions and patents was the subject of discussion at all. The Shoe Company stock was not included at that time.

Mr. Plant also informed me at the interview on June
570 23d that he would not consent to Mr. Warren and Mr. Mayo, the two experts that I had named, examining his machines, and that anyone inspecting his machines would have to be satisfactory to him and to go under stipulations which would be satisfactory to him. Mr. Plant is very arbitrary and peculiar in his methods, and at that same interview he talked with me about the proposed attack on our company in the newspapers. He also read me an extract from a letter that he had received from one H. W. Smith, in Worcester, which he said had affected him a good deal and made him feel that he did not want to start this attack in the newspapers. He said he wanted to be recognized in the community as a builder up, not as a tearer down.

He then showed me a letter that he had prepared to publish in the newspapers but which he had decided to withhold for the present. This letter was an attack upon our company and its methods of doing business. He said if we would not trade he was going to publish it in the New York and Boston papers. He was also showed me extracts from opinions from various attorneys, including one from Brandeis, Dunbar & Nutter and Mr. Brandeis personally. I do not remember the others but that one impressed itself upon my mind. Mr. Brandeis had been one of our directors and one of our counsel.

Mr. Plant said he was going to publish these letters if I did not trade with him then, without seeing his machines.

I said that of course I could not consider trading with him without seeing his machines and I was not interested in what he had unless he had improvements that would be of value to our customers. I was very sorry, but I could not do any business. He said that he could not consent to our men seeing his machines; that his New York attorneys did not agree to it.

Mr. Endicott, Mr. Plant and I met again on June 27. At this interview, arranged by Mr. Endicott, he suggested that a good way to arrange the matter would be to pay something as an option, upon which Mr. Plant would give us the right
571 to examine the machines. As I understood the situation, Mr. Plant desired very much to sell us his patents and inventions, but he was very much disturbed about our seeing what he had, and of course that made a deadlock.

At that interview Mr. Plant said that his price was now $6,500,000, and that it would be $7,000,000 the next week. He also said that we could pay him $500,000 for an option and have Mr. Alley, one of our men, examine his machines, or we could give him $1,000,000 and Mr. Alley could have associated with him Mr. J. H. Connor, who is now vice president of our company, but who was then our representative in Europe and who was in Europe at that time.

If we did not buy, the million dollars was to be forfeited to Mr. Plant, so that a look at his machines would have cost us a million dollars.

I did not accept that proposition. I always declined to have anything to do not only with buying but considering his propositions without a full and complete right to examine his machinery, determine the value of the inventions—the patents that he had—and Mr. Plant knew that my position all the time, at every interview was that I was not interested in what it cost him to get them up, whether much or little. My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him—but I would not pay a cent more for them

To get by this deadlock where Plant would not allow us to look at the machines and we would not consider purchasing without looking at them, there were suggestions that Mr. George Keith, of Brockton, and Mr. John H. Hanan, of New York, both shoe manufacturers and directors of the United Company, should go to see his machinery and advise me, from a shoe manufacturer's standpoint rather than from the standpoint of the machinery expert or the machine operator, whether it would be right for me to pay this million dollars for the option, on
572 the theory that if the two shoe manufacturers thought the machinery promising enough I would be warranted in paying a million dollars and then having our experts see the machines.

Mr. Keith and Mr. Hanan declined to accept that responsibility and I declined to have them. And that seemed to bring the matter to a conclusion at that time so far as any possibility of meeting any of Mr. Plant's desires was concerned, and I so notified Mr. Endicott, and so far as we were concerned all negotiations were off between us. I have a memorandum that that was June 29th.

I telephoned to Mr. Endicott that evening stating that Mr. Hanan and Mr. Keith refused to assume the responsibility in respect to the machines and advising one way or the other, and in view of the fact that Mr. Plant would not allow us to have our experts examine his machines we should drop all negotiations. Mr. Endicott said he did not see how we could do otherwise. That is the memorandum I made.

Mr. Endicott called on me the next day and suggested that it was the first large transaction in which he had been interested which had not gone through and that we ought to have these patents for the benefit of the whole trade, and suggested that he become interested in the United Company, if it met with the approval of my associates and myself, and that if he and Mr. Keith and Mr. Hanan, three very large manufacturers, saw the machinery together and recommended the purchase I might then feel warranted in doing it. Mr. Endicott was unequivocal in stating his belief that we ought to acquire Mr. Plant's inventions. He had seen them himself.

This suggestion of Mr. Endicott's appealed to me. I knew him very well. I had assumed that he had been employed by Mr. Plant to negotiate the sale, although that had not yet appeared. At this interview Mr. Endicott told me that that was the fact, but that if he came with the company that incident would of course be closed and his entire interests would be with the company, but that nevertheless he believed so strongly that we ought to have the Plant inventions for the benefit of our customers that he wanted to do everything that he could to to bring that about.

I conferred with Mr. Howe and as a result of that interview I met Colonel Barbour in New York, one of our vice presidents, and Mr. Woodward, of the Hanover National Bank, one of our directors, with Mr. Endicott.

573 As a result of these conferences Mr. Endicott was elected a director, and I understood that he notified Mr. Plant he was to become a director and that his interest in acting for Plant was closed, but that he wanted to bring the trade about.

It was then arranged that Messrs. Endicott, Keith, and Hanan should visit the Plant factory and inspect the machines, and

they did this on July 5, 1910. On the evening of that day we had a meeting at which Mr. Fish and Mr. Herrick were present, and Messrs. Connor, Hurd, Willson and Howe, of the United Company. Messrs. Hanan, Endicott, and Keith and Mr. Endicott's practical men, his superintendents, made reports regarding what they had seen at the factory, the value of the machines as they saw them in operation, what improvements or changes in the operations of the machines they could see as compared with ours. As a result of their inspection there was not a unanimous report that we should buy the machines at the price that was asked.

The theory which Messrs. Keith, Hanan, and Endicott had in making their visit was that if all three of them recommended it, it would be all right for me to purchase without seeing the machines. Mr. Endicott reported in favor of the purchase and the other two did not.

What was decided then was to decline to purchase, without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines.

That decision was reached in the evening of July 5, 1910, and was communicated to Mr. Plant, and I did not see Mr. Plant again until September, although between July 5 and September I heard from Mr. Smith, of Worcester, either directly over the telephone or through Mr. Herrick, his purpose being to endeavor to bring about a sale of the Plant inventions to our company.

At the request of Mr. Plant, through Mr. Endicott, I met Mr. Endicott and Mr. Plant on September 13 at the Touraine. At that interview I told Mr. Plant that I must absolutely decline to consider any propositions from him or carry on any negotiations whatever except upon the basis of seeing his machinery, having our experts examine it and ascertaining the value of his inventions to the art of shoemaking. That was all I was interested in. I would not consider it without that.

574

At this interview Mr. Herrick was called in at Mr. Endicott's suggestion. A verbal understanding was arrived at that for two weeks after the proposed inspection of Plant's machines we would file no additional suits for infringement against Mr. Plant. A number of infringement suits had already been filed and we had prepared a number of others ready to file, a list of which was furnished to Mr. Plant, and there was also a suit pending in the State court against the Thomas G. Plant Company, the shoe manufacturing company, which related to that company's obligations to pay royalties on our machines.

575

At the meeting on September 13 an understanding was arrived at that we should be allowed to inspect Mr. Plant's machines.

This followed a definite statement by me that I would not have any further negotiations with him except upon that basis. I had made that statement many times to Mr. Plant and apparently he had arrived at the point where he was ready to accede to it. At that time there was no change in the propositions that Plant made to me. It did not include anything different.

On September 14 Mr. Elmer P. Howe and I, together with a committee of machinery experts and patent experts, visited the Thomas G. Plant shoe factory where Mr. Plant had installed the machines embodying the inventions the sale of which he was discussing with me. He showed us the machines in operation upon women's shoes. A thorough investigation was made on the 14th and 15th and I think our experts continued on the 16th. The experts reported to Mr. Howe and me each night.

I studied these machines personally as an expert. I have devoted my entire life since 1886 to shoe machinery, and up to two years ago I believed I had a broader knowledge in shoe machinery than anyone else. I considered his machines from the standpoint of their capacity, the value of the inventions, and improvements embodied in his machines, comparison of the work of his machines and the work of ours, and the mechanical construction of his machines.

I saw many machines there that were especially adapted to Mr. Plant's own conditions. I saw that certain of the machines were adapted to his women's work and that certain of the machines were adapted to the peculiar way in which he made certain
576 of his shoes. I also saw some things, especially in connection with the welding and stitching machines, which I believed to have very great value. Plant had used the Goodyear machines as a basis for his machines and had made important improvements and developments.

The two striking changes or improvements which one would notice in the welt-sewing machine were means for cutting off and holding the welt and the thread, cutting it off at the end of the sewing operation and holding the welt and thread ready to start the sewing on of a welt in a new operation, and the stop motion which was embodied in that machine, which stopped the machine at the end of the sewing operation and partially reversed the position of the machine so as to release the thread. Those were automatic.

I regarded those as of the very greatest practical importance and of very great value.

The principal examination of the Plant machines was concluded in two days and Mr. Howe and I spent one day there ourselves.

I met Mr. Plant on the 16th at the Algonquin Club again, with Mr. Endicott present, and at that meeting Mr. Plant said that he had made up his mind that he wanted to get out of business altogether; that if he sold to us his patents he wanted to sell also the stock that he owned in the T. G. Plant Shoe Manufacturing Company. I asked him how much that was, and he said it was sixty per cent of the total.

The capitalization of the Plant Company was $3,750,000; divided into $2,500,000 preferred and $1,250,000 common. Mr. Plant said he wanted to sell us sixty per cent of each class of stock, which was all he had.

Among the reasons which Mr. Plant suggested for our acquiring the shoe factory were that it was a model factory and could be utilized to the advantage of the entire shoe trade in showing them improved methods of organization, operation, and assembly of machinery, and methods of sending shoes through the factory; also that we could install new machines in that factory as we got them out and invite the trade to see them in operation there. Some things that Mr. Plant said in that connection were sound reasoning.

577 I required Mr. Plant to put in writing a statement of the earnings of the Thomas G. Plant Company, the shoe manufacturing concern, for a series of years and to guarantee the correctness of those figures and the amount of the assets when the final arrangements were made. That statement is attached to one of the contracts in the exhibit of the Plant papers.

In round figures the earnings for the year previous were $700,000, and broadly they showed ten per cent net earnings upon the company's business. That was a very good business and the earnings were to that effect for a series of years.

I asked Mr. Plant, as I always had, what his price was, and he said that he would have to get for that, the sixty per cent of the stock of the shoe company and his patents, either $8,000,000 or $8,500,000; I am not positive which of those figures it was. It wasn't less than eight and it wasn't more than eight million and a half, one or the other. I told him that that was an impossible figure; that I couldn't consider it; that if he wanted to make such a trade to get out of the shoe business, sell his patents, and he came to the conclsion that he wanted to make a better price than that, that I would be very glad to hear from him, but that price didn't interest me. I made him no proposition either at that time or at any time. That ended that interview.

The next interview was on September 20, again at Mr. Plant's request made through Mr. Endicott. I arranged for such a meeting with Mr. Herrick to meet Mr. Plant and, as I found out afterwards, Mr. Carr, one of Mr. Plant's attorneys. That meeting took place at the Puritan Club on September 20, in the evening. I am not a member of that club; I don't know how the meeting happened to be there, or anything other than the fact that the meeting was at Mr. Plant's request and in the evening, and I had Mr. Herrick with me, but Mr. Endicott was not present.

578 At that interview Mr. Plant stated, as he had before, that he wanted to get out of business entirely; he wanted to get out of the shoe business; that he had been working day and night, got involved in this trying to invent machinery; that he didn't want to embark in the shoe ~~manufacturing~~ business, and that he would like to have us buy what he had. He wanted me to make him a proposition. I said, "No, Mr. Plant, I can't make you any proposition; I shan't make you any proposition. As I have told you repeatedly I am only interested in these patents to the extent of their value to the art of making shoes. Your business I don't want. If it is necessary for you to sell that to clean up this whole situation, if you want to do it, I will consider a proposition."

I think Mr. Plant was reluctant to make me a proposition for fear that I might quote him. He said that he would like to submit a proposition if he could make it to Mr. Herrick and not to me. I acceded to that and left the room.

579 A little while later Mr. Herrick reported to me that Plant had said that he would sell his stock in the shoe manufacturing company and his patents and inventions for $3,000,000 in cash and $1,500,000 in United Company stock on the basis of $50 a share, the par value being $25. There was no division in price between the machinery and the stock of the shoe company.

I told Mr. Herrick to reply to Mr. Plant that I would advise our people to accept that proposition, but that while I could speak for myself and the other members of the committee in Boston, I wanted the approval of all my executive committee before I acted and would have to report to Colonel Barbour, who was in New York.

We left the Puritan Club and went up to the Algoquin, where I met some of my executive committee.

I heard from Colonel Barbour the next evening, September 21, and he approved accepting Mr. Plant's proposition. On the

morning of September 22 I delivered to Mr. Herrick our company's check for $500,000. It was a part of the arrangement with Mr. Plant that if we accepted his proposition he was to be paid $500,000 and then the papers would be drawn. (Witness produces and identifies the check.)

Mr. CHOATE. I only wanted to call attention to the fact that this check was deposited in the bank during business hours of the 22d of September. It is stamped on the back "September 22d."

Mr. FOWLER. There is nothing showing when it was cashed, when Plant actually got the money on it. There is nothing indicating when that was?

Mr. CHOATE. No.

The WITNESS. They commenced the preparation of the papers about noon on that day. That is, I had paid down $500,000 and the preparation of the papers had been commenced before Mr. Plant met the Western people at all, on the evening of the 22d.

Mr. Plant had told me, I think on the evening of the 20th, that he was expecting the Western people in Boston and that if he traded with me he would have to put up a proposition to them that they could not accept, or something to that effect. That is the way I understood it. I did not pay much attention to it because it did not affect me one way or the other.

Since this transaction Mr. Plant has carried out the desire which he expressed to retire from business and he is developing a very large country estate up near Lake Winnepesaukee. I believe he has bought a mountain up there.

580 The value of the improvements that were embodied in Mr. Plant's welt-sewing machine, especially when combined with the new high-speed machine which we at that time had just developed and were placing in the factories of our lessees, in a broad way is almost incalculable, I think. In order properly to understand that, I should say a few words. This welt-holding device that was embodied in Mr. Plant's machine involved the use of a welt-holding device which belonged to the United Company and controlled unquestionably, I think—that was the opinion of Mr. Fish, one of our patent attorneys—the use by Plant of his welt-holding device. At the same time Mr. Plant had so improved upon that as to have a very much more practical embodiment of that invention than we had.

In a broad way it was a perfect deadlock. He had controlling patents for a practical way of doing it while we had the controlling patents of the invention itself. In addition Mr. Plant's holding device cut off the welt at the end of the sewing operation without waste of welting material. To understand this

situation the best way, perhaps, is to state somewhat the amount of the saving involved. It saves in material over the best and most efficient hand manipulation at least a quarter of a cent a pair.

In prior machines the welting was held by the finger of the operator who drew the welting out from the welt holder and held it on the shoe while he presented the shoe to the machine and while the first stitch was being made. This resulted in a great waste of welting because the operator looked out for his fingers and drew off enough welting to avoid injuring them. I have seen the amount of welting wasted by operators on machines and it is very much in excess of the amount of waste which formed the basis for my estimate of the saving by the Plant improvements. Plant's cutting device, which was combined with the holding device, cut the welt with a similar saving at the end of the sewing operation, but the saving on that side would not be as much as on the other because the operator would not waste as much welting on that side. When I have spoken of the saving I have meant the combined saving.

Combined with these improvements was the welt measuring device that prevented the operator from drawing out more welting than he should from the welting reel. While Mr. Plant's mechanical embodiment of this invention was not as perfect as it might have been, there was purely mechanical improvement to be done.

581 The saving in welting effected by Plant's improvements is shown by defendants' Exhibit 106, a shoe sewed on a machine without the Plant improvements, which may be compared with defendants' Exhibit 107, a shoe sewed on a machine equipped with the holding and cutting off device. Defendants' Exhibit 106 shows the minimum saving and does not represent the average amount that is actually saved.

In addition to the advantages in the saving of material, the Plant stop motion automatically stopped the machine and reversed its movement so that the thread would be freed and the shoe could be released from the machine. In our machines, prior to the Plant purchase, while the machine is running at quite a speed, the operator grasps the handwheel, practically before the seam is finished, to stop the movement of the machine. He begins to slow it down before he finishes the seam. After stopping it he has to reverse it part way in order to release the thread from the barb of the needle before the shoe can be withdrawn from the machine. Then he cuts the thread with his knife. In an ordinary day's work the operator had to stop

the machine from 600 to 1,000 times, and he had to stop it by putting up his hand and grasping the hand wheel. This is the old method.

When the Plant machine stopped, the thread and welt were cut by the welt holder and thread cutter, and the machine was ready for the next shoe without any adjustment. These improvements necessarily increased the capacity of the machine.

If it were not for the limit that is placed upon the operation of some of the machines in centers like Brockton, the saving in labor cost would be very large. I mean by the union rules which limit the number of pairs a day a man can operate upon—where each man has to wait his turn to get a case of shoes—"passing the buck," as they call it. I could give you some figures from outside factories. There can be no question about the fact that the machine has increased efficiency. There can be no question about the fact that the machine's efficiency or productivity, so far as its capacity is concerned, has been increased very largely.

582 (Statements by witness as to savings effected by manufacturers being objected to by counsel for petitioner, the witness' memorandum of savings made by manufacturers when using United Shoe Machinery Company's model K welting machine is marked "Defendant's Exhibit 240" for identification, Rec., p.—.)

Q. In your opinion, Mr. Winslow, is there any question but what these improvements obtained from Plant were worth all that the company paid for them?

A. Not the slightest. If my judgment hadn't been that they were worth more than what we paid for them, we never should have bought them.

Q. Was the price paid for them exorbitant?

A. No, sir.

Q. In view of the addition to the art that they constituted?

A. I should be very glad to buy the same value next week.

I value the Shoe Manufacturing Company's stock at the time of purchase at three million and a half, which would have left a value of $2,500,000 that I paid for the patents, assuming that our stock was worth the $50 per share value which Mr. Plant placed upon it.

Since the United Company acquired the Plant patents and improvements it has developed many of them. I may perhaps illustrate by referring to those same inventions that I have already spoken of. The stop motion that Mr. Plant had embodied in his welt-sewing machine would not allow of the ma-

chine being slowed down, as is ordinarily the fact when you are sewing around the toe of the shoe. We took that embodiment of Mr. Plant's invention and put our inventors to
583 work upon it and improved upon it so that our welt-sewing machine now embodies a stop motion which the operator can slow down at any time, any place, anywhere in the operation of sewing around the shoe, and then bring the machine to a stop and reverse it to the proper position within any one cycle of operation of the machine. That is an illustration of what we have done in improving those improvements that Mr. Plant had.

We have offered every one of them to our customers as fast as we have perfected them, or where we have been able to take them without the necessity for perfection.

The welter improvements are embodied in our model K welters and the stitcher improvements in our model M stitcher and a great many of both machines put out.

We have been working upon the other improvements acquired from Plant in the experimental department of our factory.

We found hardly a machine in the Plant factory, which was in any way complicated, which was properly constructed mechanically. Many of them were too light in construction even for use in the Plant factory, although all of them were in operation and doing the work there. During our inspection we saw many machines that were broken down, not in condition to operate.

As to the condition of the Plant inventions, the art of constructing shoe machinery had developed apparently beyond the knowledge of those men who had constructed or embodied Mr. Plant's ideas in his machines. In other words, they had apparently constructed those machines with a view to the kind of work done in Mr. Plant's factory. Back in the early '90's that was about the way every shoe machine was got up. A machine was gotten up with reference to the manufacturing in some particular factory, and then was adopted to go out in the trade, with the manifest result that it was not anywhere near universal for doing that same operation in other factories. That is, that adaptation of a machine to use in factories making varying grades of shoes is one of the very large items of expense in our experimental department. In other words, a machine may be constructed that will work perfectly in A's factory, but is entirely imperfect when you try to use it in B's factory in work that varies to the ordinary eye but very little. In the list that I presented to the Court the other day we have one machine on there which we have been at work on for seven or eight years to

accomplish just that very thing. Now, Mr. Plant's machinery as embodying his inventions was really in just that state. I don't know that I can describe it any more intelligently than that.

Q. What did his machinery really consist of, other than this line of machines in the Plant factory?

A. He had a few machines downstairs that were not set up. He had quite a stock of spare parts and extra parts, and I think a very few machines that were finished, that is, constructed, beyond those that he had set up in his own factory.

Q. Well, was he in any sense equipped to supply the trade with machines?

584 A. I don't think he could have equipped a small factory with machines.

Q. Had he any selling plan adopted, or leasing plan adopted?

A. No, sir. On the evening of September 20th his position I think is best described by the statement that he made to me, that he didn't want to embark in the shoe machinery business. That represented the exact status of it. He had embodied these inventions in some machines and set them up in the shoe factory in which he was interested to test them out and prove that he could make shoes by the use of those machines that were constructed.

Plant had not installed a single machine in the factory of anybody else. He did not have any machine shop of his own where he made his machines; they were made for him by other people; although he was interested in a machine shop in Lynn and controlled the Stanley factory at Lawrence by contract with Mr. Stanley. He was making some use of those to get these machine parts ready.

We have continued the Plant shoe factory under the management of the men who had been associated with Mr. Plant up to the date of the acquisition, with the understanding with them that when they had demonstrated their ability to continue that business we would sell it to them. That is the situation to-day and if we had been sure that they could continue the business successfully we should have turned it over long ago. They have not the money with which to pay for it and will have to be allowed to earn it; that is the general understanding. The business is continuing and is very successful. It has not been suppressed. It has been increased to the largest business this last year that the Plant Company ever did. Their shoes are known as the "Queen Quality" and "Dorothy Dodd" shoes.

After consummating the transaction with Mr. Plant word was brought to me, while I was in Mr. Fish's office, that the shoe

manufacturers had come here from the West to see Mr. Plant and would like to have an interview with me. Some one came to me personally and asked me if I would meet them. I said that I would and a meeting was arranged for September 24 at Hotel Touraine. Mr. Charles H. Willson, then our general manager, accompanied me, and he and I met Mr. Milton
585 Florsheim, of Chicago, and Mr. Jackson Johnson, of the Roberts, Johnson & Rand Shoe Company. Mr. Florsheim said that they were a committee representing six or seven of the shoe manufacturers who were here from the West and that they had a proposition to make to me. He said that while of course they did not know how much we had paid Mr. Plant, the manufacturers would like to furnish the amount of money that we had paid, in return for which we should give them common stock in our company, on the basis of $25 a share. That stock was then selling for $50 in the market so that, assuming that they had known how much money we paid Plant, their proposition was to furnish three million dollars in cash and we would issue three million dollars in our stock at par, and that of course meant giving them the difference between the par value and the market price of that stock, which was three million dollars.

I told Mr. Florsheim that I would not consider such a proposition as that. He urged me to consider the value to our company of these particular manufacturers being interested; said that they weren't speaking for the rest of the trade. That statement was made in reply to mine that we couldn't do anything for them that we didn't do for every manufacturer, and he suggested that I devise some means by which they, meaning the manufacturers whom this committee represented, should be able to acquire a large interest in our company, offering to agree on their part that that stock would be held by them over a period of years, which, for illustration, he said might be ten years, so that we could be assured of the benefit of their being interested in our company and not opposed to us.

I then called his attention to the fact that we had in operation at that time a plan by which all the shoe trade were being made interested. That was our plan of June, 1910. He said that did not interest him.

The substance of what he said to me was that some means should be found for giving the manufacturers whom that committee represented an interest, and a large interest, in our company, and it was said in such a way that made me understand that if we didn't there would be trouble for us. There has been. That covers that conference. As a courteous way of closing

the conversation I agreed to take the suggestions under consideration. No response has been made to them.

Mr. CHOATE. May it please your honors, I want to ask permission to do a thing that is, perhaps, a little unusual, but which I think would be exceedingly helpful to the court and counsel in this case, and that is to ask the court in effect to take a view of the operation of these principal machines by allowing us to show here in the court room by vitagraph pictorially on the screen the operations of those principal machines which show their relation to each other and their consecutive operation. It will take about twenty minutes to do it.

PUTNAM, J. Any objection, Mr. Fowler?

Mr. FOWLER. We do not object.

586 Mr. CHOATE. If your honors please, the method of presenting these pictures is by throwing on the wall first a picture of the machine still, and I shall attempt to state the name of the machine and briefly its function as that picture is thrown on the wall. Then next a picture of that machine in operation. And that will be repeated as to each of these machines. I think there are twenty-six pictures. In the pictures showing the machines in operation, the operator has succeeded in showing in a part of the picture the machine operating very slowly so that you can see exactly what it is that the machine does, and then again the machine operating at its normal speed in the hands of the operator. And I might say that these pictures were taken not for the purpose of this case at all, but in the factory of John Hanan in New York under ordinary manufacturing conditions. And in each picture the operator is attempting to point out to the observer what it is that the machine is doing. You will see his finger or his hand or his pencil pointing to the part of the material upon which the machine is operating.

Mr. FOWLER. May it please the court, I would like to have Mr. Choate state to the court for what purposes these pictures are to be exhibited.

Mr. CHOATE. Two; first, to show the court the complicated character of those machines which use material or which handle material; and, second, to show the relation of the several machines which are exhibited each to the other, namely, that each machine is shown to be preparing the material for the operation of the next machine that succeeds and preparing it in a way that is peculiar—peculiarly adapted for the operation of the next machine. The observation of the operation I think will demonstrate that to you.

Mr. FOWLER. When a moving picture is exhibited of a matter of this kind I take it is necessary for some one to make an

explanation as it goes along. Now, I think that that explanation should be made by some one under oath. That is, I think that is the proper manner, so that he might be cross-examined in regard to that matter.

Mr. CHOATE. I am not objecting at all to the course Mr. Fowler suggests. I would be glad to have him have the witness sworn, or have the witness under oath.

(Roll of films showing operation of machines of United Shoe Machinery Company is marked "Defendants' Exhibit 241.")

(At this point the lights in the court room were turned out and the films were exhibited, the following explanatory statement being made by Mr. Winslow:)

587 Mr. WINSLOW. This picture shows the welt partly on the shoe. That is the welt that the operator draws up, and that shows where it is placed on. The pencil shows exactly the position of the welt in the finished shoe to which the sole has been attached.

(Another view.) This is the Goodyear insole Universal channeling machine, which channels the inner sole, prepares it for the operation of attaching the welt and upper to it. In this machine the operator runs it slowly now. It is cutting the channel. Now, he shows the channel which has been cut on the inside and on the outside, the two channels that are really necessary. That is a close view of the same machine, running slowly.

(Another view.) This machine is the Goodyear lip turner and slashing machine, turning up the lip of the innersole that you have just seen channeled, after being channeled, and slashing that lip so that it may lay over smoothly. That is a near view of the machine and the part moving down to press back, and at certain places slashes the channel or lip that is turned over there, getting this channel or lip ready for the welt-sewing operation. That lip has been turned partly back; now the machine is working at speed. You see the two cuts on the side there where it has been slashed. That is the insole ready to be placed upon the last.

(Another view.) That is the United Shoe Machinery Company insole tacking machine No. 1 which attaches the insole to the wooden bottom of the last upon which welt shoes are lasted, fastening it at several places so as to hold it in position for the lasting machine to press the upper up against the shoulder of the channel of the insole which you have just seen the machine get into position. Four nails are inserted, one on each side, one at the heel and one at the center.

(Another view.) This is the Rex assembling machine in which the last, upper and counter are assembled and one tack placed in the back seam to hold the upper and last in proper position
588 for its introduction into the Rex pulling-over machine. That is the counter which is inserted in the back part of the shoe. The last with the insole attached, as you have seen in the previous operation. That is the placing of the shoe upon the last, that being in the box. That is the condition in which the shoe is left after it leaves the assembling machine. In this picture you see the operator placing the upper and last together and inserting them into the machine for the machine to perform its operation of placing the tack in the heel of the shoe. At present the operator is showing the box.

(Another view.) This is the Rex pulling-over machine. When the shoe has been prepared as you have seen in the previous picture the shoe in that condition is inserted into the machine, where it is taken hold of by the pinchers and drawn into its proper position upon the last. Five tacks are driven, two forward of the seam in the tip and one at the rear of the tip on each side. The upper is drawn down to the wood and the whole shoe is then in position to go to the lasting machine. The operator is just inserting the shoe into the machine. His thumb there is taking hold of the tip—the pinchers on each side of the ball. By that one operation the shoe has been drawn over and five tacks inserted. That is the second shoe under the same operation. Certain levers are moved at the sides, as you see now, to properly adjust the leather prior to the pulling. We now see him measuring the length of the tip so as to see that the tip has been drawn over a certain distance. He is now pointing out where the tacks have been driven, three on each side, and he points out how the leather has been drawn down to the wood.

(Another view.) Consolidated hand-method lasting machine. This machine operates to draw over the leather between the heel and the toe portion and insert a tack at each draught; it draws over the leather piece by piece, or step by step as it
589 has been termed. At each movement of the pinchers a tack is inserted. The parts you see moving there are the pair of pinchers which take hold of the upper piece by piece. Each time they move a tack is driven. The tacks are left standing up so that they may be withdrawn for the operation of welt sewing. In the next operation he is pointing out the tacks he has driven. You will observe that neither the heel portion nor the toe has yet been lasted.

(Another view.) This is the No. 5 lasting machine which lasts the heel portion and the toe portion, crimping them in and draw-

ing them into their proper position, pressing the leather in the toe portion up against the shoulder of the inner sole, that portion which you saw turned up in one of the previous operations. You will notice the operator using a hand-tacking device to drive the tacks around the heel portion and at the toe portion inserting the wire. There are no tacks driven around the toe. In the very center of the picture you see the tack hopper and the tacker itself which he removes from that position. He places the shoe on a spindle now and lasts the heel portion. That is what he is doing now. He drives the tacks around with the hand tacker. Now he proceeds to last the toe portion. That is the hold-down there, to hold the shoe firmly against the movement of the wipers in drawing the toe over. The toe having been lasted, he now proceeds to place the wire around the toe to hold the upper against the shoulder of the insole. He is now pounding the heel-seat by the ordinary hammer. There you see the wire around the toe portion—no tacks there. The side tacks still remain. That shows the heel-seat as it has been lasted by the machine.

(Another view.) This is the Goodyear upper stapling machine, which inserts the small wires to hold the upper up against the shoulder of the inner sole and allows all of the tacks which have been left standing up to be removed, thereby avoiding in the operation of the welting machine the danger of the breaking of any needles, which has always been the great trouble. This machine, of course, saves a great deal, not only in the cost of the needles, but in trouble to the operator, and is one of the new machines which we have developed. Each movement inserts the staple—a very fine wire that you see coming from that reel of wire, so very fine that you can hardly see it. You will notice that all tacks have been removed from that shoe and it is now ready to go to the welt-sewing machine.

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(Another view.) This is the Goodyear tack-pulling and resetting machine for taking out those tacks which are put in by the lasting machine after the stapling machine has inserted the staples. It may be also used for inserting tacks to hold it temporarily before the welting operation when used as a machine for just that purpose. You observe that each tack is removed. The tacks have all been removed excepting those that have been inserted to hold the shoe when the stapling machine is not used.

(Another view.) This is the Rex upper-trimming machine, model H. It trims the upper to get the shoe further ready for the welt-sewing machine. It is the surplus upper that has been drawn over in the lasting operation. You will notice the rotary knife at the left of the shoe there, trimming off the upper. The

operation is very rapid. On the right is the shoe with the surplus upper trimmed, on the left as it went into the machine.

(Another view.) This is the Goodyear welt and turn sewing machine, model K, which embodies the stop motion, the welt and thread holder and cut-off device, and, as you will see, is a very complicated machine. At the top of the picture you will notice the sewing mechanism. This machine attaches the welt to the upper, for which all the previous operations have been preparing the shoe. The white strip which you see underneath the operator's hands is the welting; the welt has been attached in that shoe. The second shoe going into the operation.

591 The movement now just coming—there, that was the cuting off of the welt which the operator is pointing out. He now shows where the stitches have been placed to attach the welt, and the short piece that is left of the welting.

(Another view.) This machine is the Goodyear Universal inseam trimming machine for trimming the upper, which has been still further drawn over the last by the welt-sewing operation, and trims it down close to the seam so that the least amount of filling, as it is called, which is placed upon the inner sole, is needed. That was the entire operation of trimming. The second shoe going through the same operation. You will observe that all the surplus stock has been trimmed now and the shoe made ready for the filling.

(Another view.) The Goodyear welt beating and slashing machine. This machine operates upon the welt, which, as you will see in the previous picture, was somewhat curved down over the shoe to straighten it out and level it, slashing it around the toe so as to allow it to stand out straight for the placing of the outer sole upon it. As you will notice, as it goes around the toe—there you see that part moving. That does the cutting or slashing around the toe. That shows the welt standing out at right angles to the shoe.

(Another view.) The Goodyear improved sole-laying machine, model C. This is the machine which is used to temporarily attach the outer sole to the shoe on the bottom and press it against the inner sole and the welt, which has been straightened out for that purpose. The operator has placed the sole in block shape upon the shoe and it has now been temporarily attached. This picture shows the result after it has come from the improved sole-laying machine.

(Another view.) Goodyear Universal rounding and channeling machine, model E. This machine takes the shoe as you have just seen it come from the sole-laying machine and rounds the

outer sole, which was in block form, to conform to the shape of the last, channeling it on the outside of the out-sole at the same time that it rounds or brings it into shape. This is one of the very important auxiliary machines. You will observe that the outer sole in its blocked position, that part of the machine trims off now. That outer sole has now been brought into shape to conform exactly to the shape of the last and at the same time has been channeled, as the operator shows with his pencil.

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(Another view.) Loose-nailing machine No. 2. This machine now takes the shoe and fastens the outer sole to the inner sole at the heel portion of the last to hold it in that position for the operation of the stitcher. Those nails have been driven right around the heel seat there and permanently fastened.

(Another view.) The Goodyear channel-opening machine. This machine opens the channel upon the outer sole which has been channeled by the Universal rounding and channeling machine when the outer sole was trimmed to a shape to conform to the last. This machine gets the shoe ready for the stitches so far as the channeling is concerned. Observe that the channel has been turned out so that the needle in going through will not touch the lip. It is in that place pointed to by the pencil where the lip has been turned up that the stitches of the out-sole are placed.

(Another view.) Goodyear out-sole rapid lockstitch machine, model M. This machine has the stop motion similar to that in the welt machine except that it does not reverse. This machine attaches the outer sole to the welt and places the stitches in the channel which you have just seen raised by the channeling-opening machine.

(Another view.) Placing the shoe in to stitch it. He turns it slowly to show how the machine operates in taking each stitch. Now the machine is operating at speed. A curved needle is used in this machine. He points out where the stitches have been placed in the channel. He now shows the white marks where the stitches are on the welt side of the machine.

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(Another view.) Star channel-cementing machine, model C. This machine places the cement in that channel that you have just seen the stitches placed in in order that the channel may be laid down and not show, the channel in the finished shoe covering the stitches.

(Another view.) Goodyear channel-laying machine. The shoe gets to this machine and the channel is laid down smoothly, being held in position by the cement so as to conceal the fact that a channel has been cut in the leather when the shoe is finished.

The operator is operating the machine very slowly now to show just what it does. Now at speed. He repeats the slow operation. Now, this is the normal speed at which the operator does the work. You will notice the channel has been laid down so that no stitches are to be seen.

(Another view.) Hadaway stitch-separating machine. This machine separates on the welt side each stitch from the other, making a straight mark, which undoubtedly you have observed between the stitches on the outside of your shoe. It gives the shoe and the stitching a definite and regular appearance. The machine acts automatically to find the places between the stitches. You will notice the straight marks, rather indistinct, but it shows between each stitch.

(Another view.) Goodyear automatic sole-leveling machine. In this machine a pair of shoes are placed and the concave rollers, two of which you see in the front part of the machine, roll or level the sole down to conform to the bottom shape of the last. The work of the machine is entirely automatic. The shoes are placed upon those two jacks and then inserted in the machine for the operation of the rolls. You will notice they turn from one side to the other to bring the leather into close contact with the shape of the last.

594 (Another view.) The Goodyear heel-seat rounding machine. In this machine the block of square leather you have seen up to the present time on the heel portion of the outer sole is removed and this portion of the outer sole is brought into the shape of the heel of the last, and properly shapes it for the heel portion to receive the heel. It turns down that lip in shape, the proper shape to conform to the heel portion of the last. You will notice the left-hand shoe. The square portion on the right has been removed and brought into proper relation with the heel.

(Another view.) No. 4 heel-compressing machine. In this machine the heels, which up to the present time you haven't seen, but have been prepared, nailed together, are compressed and brought to the proper height and ready for the operation of the heel-attaching machine. You will notice that the inside of the heel has been concaved to fit the heel portion of the shoe. A very large amount of pressure is used in this machine to properly bring the layers of the leather together. That is the heel as it goes into the machine. You will notice the lifts are separate. The operation of the machine; you will notice the concaved shape and the compressed condition of the leather.

This is a rear view of the same machine, showing the heels dropping down to the spout as they come out from the machine.

(Another view.) McKay automatic heel loading and attaching machine, model B. In this machine a shoe is inserted; the

nails which come from the big round drum up at the right are separated and come down through those small tubes which you see about the center of the picture into a die, which contains the holes, the number of holes, and their relation to the heel, that fasten or attach the heel to the inner sole and upper. The top lift is inserted in the same machine, and is attached by a second operation. The loading die that you see mentioned there is the die, and this is the sorting of the nails. They come down 595 sorted so that the right end drops into the tubes that I have mentioned, and fall from that down to the die. Now, the die is swung over, dropping the nails into the attaching die. Placing the heel; now placing the shoe upon the jack; that is, attaching the heels and driving the nails, which are all done by one operation. That shows the shoe after the heel has been attached, but with the nails protruding through the bottom before the top lift, which is the second movement you saw in the machine, has been spanked on.

(Another view.) Universal slugging machine. This machine is used to drive or insert a series of nails cut off from a reel of wire around the outer edge of the top-lift to attach the top-lift to the heel, and also to protect it against wear. This is the machine; you see the operator places a shoe upon a jack. It is now driving this series of slugs around the outer surface. Second shoe with the same operation. These are three X-ray pictures. The one on the right represents the freedom from nails that exist in a Goodyear welt shoe. At the heel of course you see the nails that have been used to attach the heel. The two left shoes are the McKay sewed shoes, and show the series of tacks which are left in the shoe as the result of that method of attaching the outer sole to the inner sole, and you will observe that there are no fastenings in the tread surface of the Goodyear welt shoe, as shown on the right, while in those on the left there are contained all the nails that have been necessary to introduce and leave permanently in the shoe, when the shoe is manufactured by the McKay process. These are side views of the same shoes. The two on the right in this case are the McKay sewed shoes, while the one on the left shows the Goodyear welt shoe. The black strip which you see in the shoe on the left is the steel shank which happens to be in that shoe, as it is made, while it does not happen to be in the two McKay sewed shoes. If the steel shank was in there, it would show just the same. This is the same proposition with the shoe reversed. You see on the left the Goodyear welt shoe with the steel shank and no nails or tacks in the surface of the shoe for the foot to rest upon, while

in the two right shoes you will see the condition of the sole of the McKay shoes upon which the foot is to bear.

(The exhibition was closed and the lights were turned on.)

596 DECEMBER 9, 1913.

SIDNEY W. WINSLOW, witness for defendants, resumed.

Direct examination resumed:

I know Mr. J. F. McElwain whose office is in Boston and whose company manufactures about 30,000 pairs of shoes a day, principally Goodyear welt and McKay sewed shoes.

Prior to the Plant acquisition Mr. McElwain's company was a user of the United Company's machines.

Mr. McElwain called upon me one day and asked me if I would allow him to cancel his leases in case he decided he would like to use the Plant machines. I told him I should be very glad to make fair arrangements with him to cancel any or all of his leases that he desired to cancel, so that he might use another line of machines if he desired. He never exercised that option.

With reference to the covenants in agreements of purchase of properties by the United Company, I have had nothing to do with the covenants of the vendors, with respect to their future activities, in the agreements relating to acquisitions by the United Company. The drafting of those papers was left entirely to the United Company's legal department; I did not direct anything to be inserted and no action was taken by me, or by the board of directors, or by any officer of the company that I knew of, directing or requiring the insertion of any such restrictive covenants in any agreement. These matters were left to counsel like the drawing of a deed, and I paid no attention to whether they put in covenants or what covenants they put in. These counsel were Mr. James J. Storrow, Mr. Elmer P. Howe, and Mr. Harold G. Donham. Early in the history of the company Mr. Storrow was one of its counsel.

In 1899 there were 13 Goodyear welt auxiliary machines, which are enumerated in defendants' Exhibit 242 (Record, p. —); and there were three auxiliaries in the turn set, enumerated in defendants' Exhibit 244 (Record, p. —).

In 1911 there were 36 auxiliaries in the welt set and these are enumerated in defendants' Exhibit 243 (Record, p. —); and there were nine auxiliaries in the turn set in 1911, which are enumerated in defendants' Exhibit 245 (Record, p. —).

In 1911 the company furnished all or any of the Goodyear auxiliary machines in the welt set to the users of the

597 welter and stitcher without any additional royalty, and it furnished all the auxiliary machines for turn work to

the users of its welt and turn machines without the addition of any royalty. It should also be noted that the royalty on turn shoes had been reduced 50 per cent from that charged by the Goodyear Company in 1898; for women's shoes, from one and one-half cents to three-quarters of a cent, for children's, from one cent to half a cent.

I have prepared a list of the new machines which the United Company has invented and put out to its customers since 1899 and this is defendants' Exhibit 246 (Record p. —). The date of the adoption of each machine is noted opposite that machine. In some instances I note that this runs up to 1913. The machine might have been developed many years before.

Mr. CHOATE (to Mr. Fowler). There are two or three in this list which appear to have been adopted subsequent to the bringing of the bill, but as to those, if you don't like them, it may be agreed that those should be eliminated from the list.

The WITNESS. I believe there are 150 of these machines which comprise 5 machines in the eyeletting department, 41 in the Goodyear department, 11 in the heeling department, 4 in the lasting department, 7 in the metallic department, 15 in the pulling-over department, 64 in the general department, and 3 in the fitting-room department. These machines have all been offered to the public by the United Company for sale or lease. On this list the model K and model M stitchers and the model G and model K welters are listed separately, as I thought that they should be distinguished as different machines rather than as different models.

As stated in the report made to the stockholders for the year 1911, which is an exhibit, the amounts paid per pair of shoes for the use of all the principal royalty machines furnished by the United Company, when accounts are paid within 30 days, are for Goodyear welts, men's work, 5.694 cents; for Goodyear welts, women's work, 4.694 cents; for Goodyear turn shoes, women's and misses', 1.972 cents; for children's Goodyear turn shoes, half a cent; for men's and women's McKay shoes, 1.746 cents; for children's McKay sewed shoes, 1.391 cents.

598 I have had prepared a list of machines which have been put out by the United Company to do work that before 1899 was either done by hand or was not done at all. This list is defendants' Exhibit 247 (Record p. —) and comprises 39 machines.

The machines, the operation of which were illustrated by moving pictures, defendant's Exhibit 241, operate in a factory in the manufacture of Goodyear welt shoes in the order shown to the court. Those machines, in the order in which they were shown in the moving pictures and in the order in which they are

used in the shoe factory, and the departments in which the machines belong, are as follows:

Goodyear Universal channeling machine, Goodyear dept.; lip turning and slashing machine, Goodyear dept.; insole tacking machine, lasting dept.; Rex assembling machine, pulling-over dept.; Consolidated hand method lasting machine, lasting dept.; No. 5 lasting machine, lasting dept.; upper stapling machine, Goodyear dept.; tack pulling and resetting machine, Goodyear dept.; Rex upper trimming machine, pulling over dept.; Goodyear welt and turn shoe machine, model K, Goodyear dept.; Goodyear Universal inseam trimming machine, Goodyear dept.; Goodyear welt beating and slashing machine, Goodyear dept.; improved sole laying machine, Goodyear dept.; Goodyear Universal rounding and channeling machine, model E, Goodyear dept.; loose nailing machine, No. 2, metallic dept.; Goodyear channel opening machine, Goodyear dept.; outsole rapid lockstitch machine, Goodyear dept.; channel cementing machine, general dept.; channel laying machine, Goodyear dept.; stitch separating machine, Goodyear dept.; automatic sole leveling machine, Goodyear dept.; heel seat rounding machine, Goodyear dept.; heel compressing machine, heeling dept.; automatic heel loading and attaching machine, heeling dept.; slugging machine, metallic dept.

In these successive operations machines of the kinds obtained from the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and the McKay Shoe Machinery Company 599 are interspersed among each other through those consecutive operations, and they are all required in the production of a Goodyear welt shoe and perform these necessary consecutive operations.

Referring to the testimony of petitioner's witness, Frank C. Rand, as to disks for the Naumkeag buffing machine in support of the allegation that the United Company charged exorbitant prices for its repair parts, the United Company does not own or control the Naumkeag buffing machine and does nothing except act as agent for it. That machine was invented by my father, and it is marketed by the Naumkeag Buffing Machine Company, which I have always controlled personally by leasing the machine to manufacturers, and the lease requires that the manufacturer purchase from the Naumkeag Company the disks that are used upon the machines. That is the only way in which the user pays for the use of the machine, in addition to a small initial premium when the machine is placed in the factory, which I think is about $50.

In 1911 there were 63 machines in the Goodyear department, 14 in the lasting department, 13 in the heeling department, and

6 in the metallic department, a total of 106. There were 170 machines in the general department.

Defendants' Exhibit 248 (Record, p. —) is a list which I have had prepared showing how many machines were out on January 1, 1905, on leases executed both before and after February 9, 1899, and indicating how many machines were out on independent forms of leases and how many were out on restricted forms of leases.

The machines of the Goodyear department out on January 1, 1905, were 1,798 welt and turn machines, 1,817 stitching machines, and 9,078 auxiliary machines, a total of 12,693. They were all on the independent form of lease, but the auxiliaries were restricted to use with the principal machines in that department.

600 From the lasting department there were out on January 1, 1905, 3,258 machines on the restricted form of lease and 1,956 on the independent form of lease. This does not take into account the auxiliary machines which are not separated as regards the two forms of leases in the records of the lasting department.

In the heeling department on January 1, 1905, out of a total of 1,642 attaching machines and 2,168 auxiliary machines, 142 of the attaching machines and 218 of the auxiliaries were on restricted lease; 1,500 attaching machines and 1,950 auxiliaries were on the independent leases.

In the metallic department on January 1, 1905, there were 572 standard screw machines on the restricted lease and 60 on the independent lease; 1,700 slugging machines on the restricted lease and 117 on the independent lease; 1,153 loose-nailing machines on the restricted lease and 80 on the independent lease; 3,079 tacking machines on the restricted lease and 293 on the independent lease; 630 miscellaneous machines on the restricted lease and 53 on the independent lease. The auxiliaries are not counted in either case.

In the pulling-over department on January 1, 1905, 243 pulling-over machines were out, all on the restricted lease. We had then just begun to introduce that machine.

The total number of machines out on restricted leases Jan. 1, 1905, omitting auxiliaries of the lasting and metallic departments was 10,995. The total number of machines out on independent leases on that date, including auxiliaries in the Goodyear and heeling departments, but also omitting auxiliaries in the lasting and metallic departments, was 18,702.

For the purpose of showing the extent of the equipment required for factories of various sizes I have prepared a list of the

number of the United Company's principal machines which are required for making Goodyear turn shoes in factories of various outputs between 100 pairs a day and 4,800 pairs a day. This is defendants' Exhibit 249.

601 DEFENDANTS' EXHIBIT 249.

Principal machines necessary for making 100, 200, 300, 600, 1,200, 2,400, and 4,800 pairs Goodyear turn shoes per day.

Machines.	No. of machines for daily production.						
	100 pairs.	200 pairs.	300 pairs.	600 pairs.	1,200 pairs.	2,400 pairs.	4,800 pairs.
Goodyear welt & turn machine—K	1	1	1	2	3	5	9
Loose nailer #2	1	1	1	1	1	2	3
Universal slugger	1	1	1	1	1	2	4
McKay auto. heeling machine—B	1	1	1	1	2	3	6
Premier heel-pricking machine	1	1	1	1	1	1	1

The WITNESS. For a hundred-pair factory, one Goodyear welt and turn machine, one loose-nailing machine, one Universal slugging machine, one automatic heeling machine, McKay model B, and one Premier heel-pricking machine, necessary to go with the attaching machine, are required.

Those machines are all the equipment necessary until you get above 300 pair. The next size factory I have is 600 pair. There two Goodyear welt and turn machines are required, but only one each of the loose-nailing machine, slugging machine, heeling machine, and pricking machine.

The next size factory I have is 1,200 pair, where three Goodyear welt and turn machines are required, one loose-nailing machine, one slugging machine, two heeling machines, model B, and one Premier heel-pricking machine.

The next size is a 2,400 pair factory, where five Goodyear welt and turn machines are required, two loose-nailing machines, two Universal slugging machines, three McKay automatic heeling machines, model B, and one Premier heel-pricking machine.

The next size is a 4,800 pair factory, where nine Goodyear welt and turn machines are required, three loose-nailing machines, four slugging machines, six automatic heeling machines, model B, and one Premier heel-pricking machine.

602 I have prepared a summary of the general department machines which were out on lease from the United Company on March 1, 1911, showing how they are subdivided into different models and different kinds, and the number out of each kind. This is defendant's Exhibit 250 (Record, p. —). This exhibit shows that there were 30 different kinds of machines,

comprising 45 models, of which less than 100 of each kind were out, the total number of machines of that class being 759.

There were 9 different kinds of machines, comprising 11 models, of which more than 100 and less than 200 of each kind were out, the total being 1,294.

The next class, of which more than 200 and less than 300 were out of each kind, comprised 7 different kinds of machines, with 23 models; the total number in this class was 1,765.

Of 4 kinds of machines, comprising 15 models, there were out more than 300 and less than 400 of each kind, with a total of 1,482 machines.

There was only one machine, comprising 2 models, between 400 and 500, with a total of 419 machines out.

The next class comprised 17 different kinds of machines, with 86 different models; there were more than 500 of each kind of these machines out, with a total of 22,751.

The next class comprised 4 miscellaneous machines, with 7 models, and there were 161 machines of this class out.

The totals were 72 different kinds of machines, with 189 models and 28,631 machines out.

PUTNAM, J. Why do you speak of March, 1911, Mr. Choate?

Mr. CHOATE. It is the nearest date we have to the date of bringing the bill. It marks the company's fiscal year, and a good many figures are made up at that time.

PUTNAM, J. Why do you use 1905?

Mr. CHOATE. Well, it is halfway between 1899 and 1911, and it marks an intermediate point. The work of preparing these statistics for every year would be beyond the possibility of accomplishment.

603 The WITNESS. In reference to the testimony of Petitioner's witnesses, Morrison, Sochat and Ross, in support of a claim that the United Company sought to foment a strike in Mr. Plant's shoe factory, Mr. Willson came to my office, which was on the floor above his, in May or June of 1910 as I recall it, and said there were three Armenians downstairs who wanted to get the company to assist them in fomenting a strike, or in forming a union at the Thomas G. Plant factory in Jamaica Plain. I told Mr. Willson to have nothing whatever to do with them. He left my office with those instructions. Mr. Elmer P. Howe was in my office at that time. To my knowledge the United Company never did anything to foment a strike at the Plant factory, Mr. Willson never did anything beyond the instructions I gave him; and no money that I am aware of was paid to those people or anybody in their behalf.

As to my negotiations with the committee of the New England Boot and Shoe Association with regard to independent leases for

the metallic department, the chairman of that committee was Mr. William B. Rice.

In reply to my statement that we could give them an independent lease by making an additional charge for the material he said: "Well, do that. You may add on twenty-five per cent." I told him "All right,"I would consider that, and at the next conference my rememberance is that a day or two afterwards I told him that ten per cent would be quite satisfactory to us, and that was the way the ten per cent was adopted.

The conferences with the New England Boot and Shoe Association and the National Association and with their committees commenced about November 8, 1900, and continued until late in January, 1901.

It was at the first meeting in Philadelphia that the conversation with Mr. Krippendorf, which has been referred to, occurred. I retained no minutes or copies of minutes of what was said by anybody at that time, but the conference covered a great deal more ground and many other subjects than that specific point. Taking my attitude and statements all together at those conferences, there was no statement on my part that was meant or intended to mean that I was proposing to control all the shoe machinery.

604 I had nothing to do with preparing the interview that Charles H. Jones, a witness for the petitioner, gave to the "Boston Transcript" in 1906, except to call Mr. Jones on the telephone and tell him that a reporter from the "Transcript" would like to see him. I did not in the slightest degree make any suggestions to Mr. Jones as to what he would say or how he should say it.

With reference to Mr. Jones' testimony as to my statements to him some time in the year 1907, when he was asking me to make some changes in the restrictive clauses in our leases, I did not tell Mr. Jones that I had the manufacturers in my grip, or use any language of that sort, or any language that Mr. Jones had a right to so construe. I did not demonstrate with my fist to indicate that I had the manufacturers in my control and proposed to keep them there. I never have felt that way and I never have said anything of the sort.

I did go fully with Mr. Jones into the difficulties of doing business under the independent leases, tried to make him understand the entire situation from the standpoint of the shoe machinery manufacturer. Mr. Jones was entirely mistaken when he said that I told him the company would have to get a new president, and, in fact, he makes that apply to the company doing business under such conditions, as we were actually doing

lots of business at the time; that is, on independent leases. Mr. Jones is entirely mistaken in his interpretation or his remembrance of the interview.

605 My conferences with the witnesses for petitioner who came from St. Louis were first in February, 1911, when I went to St. Louis, and again in Boston in May, 1911. Those conferences were with certain manufacturers, most of whom were represented by the committee which talked with me at the Touraine and wanted me to let them have stock in our company, as I have already testified. These manufacturers as I recall them were: Jackson Johnson, of Roberts, Johnson & Rand; Milton Florsheim, of the Florsheim Shoe Company, of Chicago; Mr. Selz, of Selz, Schwab & Company, of Chicago; A. C. Brown, of the Hamilton-Brown Shoe Company; George Brown, of the Brown Shoe Company; Mr. Peters, of the Peters Shoe Company; Mr. Selby, of the Selby Shoe Company; Mr. Krippendorf, of the Krippendorf Company.

These were the same people who afterwards became interested in the Boylston Company, and at that time they were members of the Shoe Manufacturers' Alliance. The first communication which I had from these people after our Touraine conference in September, 1910, was by letter under date of December 29. I have the letter here and it is headed "Shoe Manufacturers' Alliance," with the names of those who purport to be members of the Alliance on the letterhead. This is the defendants' Exhibit 251.

DEFENDANTS' EXHIBIT 251.

SHOE MANUFACTURERS' ALLIANCE,
1507 WASHINGTON AVENUE,
St. Louis, Mo., Dec. 29, 1910.

Officers and executive committee:
J. Johnson, Pres't.
C. H. Krippendorf, V.-Pres't.
A. D. Brown, V.-Pres't.
M. S. Florsheim, Treas.
F. C. Rand, Sec.
G. W. Brown.
J. B. Howarth.
H. W. Peters.
E. P. Reed.
Geo. D. Selby.
E. F. Selz.

606 Mr. S. W. WINSLOW, *President United Shoe Machinery Co., Albany Bldg., Boston, Mass.*

MY DEAR SIR: At a recent meeting of the Shoe Manufacturers' Alliance I was requested to extend to you and to Mr. Geo. W.

Brown, together with such other officials of your company as you desire, an invitation to meet with the executive committee of the Shoe Manufacturers' Alliance at St. Louis, Chicago, or Cincinnati at any date convenient to you between Jan. 5th and 20th.

The object of this conference is to discuss with you matters of mutual interest to your company and the shoe manufacturers associated together. Upon indication of the date and place agreeable to you, I will notify the executive committee of your pleasure in the matter.

Very truly, yours,

F. C. RAND, *Secretary.*

The WITNESS. The G. W. Brown named in this letter is our vice president, a different man from the G. W. Brown named in the letterhead.

The first knowledge that I had of the Shoe Manufacturers' Alliance I obtained from this letter.

Defendants' Exhibit 252 is a copy of my reply to this letter.

DEFENDANTS' EXHIBIT 252.

JANUARY 2, 1911.

Mr. F. C. RAND, *Sec'y Shoe Manufacturers' Alliance, 1507 Washington Ave., St. Louis, Mo.*

DEAR SIR: Yours of the 29th of December at hand, inviting Mr. George W. Brown and myself, together with such other officials of the company as I may desire, to meet your executive committee at St. Louis, Chicago, or Cincinnati at a date convenient to us between January 5th and 20th. It is impossible for me at this time to name a date within the dates that you have mentioned when it will be convenient for me to accept your invitation. I will endeavor, however, to name a date as soon as possible.

You state that the object of this conference is to discuss with you "matters of mutual interest to your company and the shoe manufacturers associated together."

I should be very glad to discuss any matters of mutual importance, but in order that the interview may be of practical benefit I would suggest that you inform me specifically as to the matters of mutual interest which your committee has in mind to discuss.

Awaiting your reply, I remain,

Very truly, yours,

S. W. WINSLOW.

SWW-NW

The WITNESS. Mr. Rand's reply to my letter is defendants' Exhibit 253.

607 DEFENDANTS' EXHIBIT 253.

SHOE MANUFACTURERS' ALLIANCE,
St. Louis, Mo., Jan. 4th, 1911.

Mr. S. W. WINSLOW, *Pres. United Shoe Machinery Co., Lincoln & Kneeland Sts., Boston.*

DEAR SIR: I wish to acknowledge receipt of your favor of Jan. 2d, stating that you cannot meet us between Jan. 5th and 20th, but will advise as soon as possible just when it will be convenient for you to meet with the executive committee of the Shoe Manufacturers' Alliance.

In answer to your request that we state specifically what we wish to discuss, will state that the shoe manufacturers are looking for improved conditions under which to make shoes. The only specific points of mutual interest between you and the shoe manufacturers are the sale, rental, and royalty of machines by you, together with the charges made thereon, and a general discussion of this subject, which is of great significance to all parties concerned, is desired.

Upon receipt of information from you fixing the date of meeting I will advise the executive committee.

Yours, truly,

F. C. RAND, *Secretary.*

Ans. by personal interview Feb. 14, 1910, with the Ex. Com.
S. W. W.

608 The WITNESS. The date of the meeting was fixed by telegraph for the week beginning February 14, 1911, at St. Louis and I arranged that date so that I could devote a week to the conference.

I had arranged for Mr. Charles H. Willson, our general manager, to go with me and we planned to leave Boston on Sunday preceding the 14th. Mr. Willson was taken sick and I went alone but arranged to have Mr. Samuel Ross, who has since died, and Mr. Fraher of our company at the conference. I reached St. Louis late on Monday and met two of the manufacturers on Monday evening.

A meeting was arranged for the next morning at ten o'clock and there were present at that meeting Mr. Jackson Johnson, Mr. Howarth, Mr. Roblee, Mr. Krippendorf, Mr. A. D. Brown, Mr. Florsheim, Mr. Selz, Mr. Henry Peters, Mr. Fred Peters, Mr. John Bush, Mr. Selby, Mr. George W. Brown, and Mr. Oscar Johnson. These gentlemen represented the Roberts, Johnson & Rand Shoe Company, the Krippendorf-Ditman Shoe Company, the Hamilton-Brown Shoe Company, the Selz-

Schwab Shoe Company, the Peters Shoe Company, the Brown Shoe Company and the Selby Shoe Company.

At this meeting Mr. Johnson acted as chairman and handed me a memorandum, the original of which is Plaintiff's Exhibit 154. The paper put in evidence is just as it was when it was presented to me with certain words crossed out and certain words inserted.

I read the paper through and took up as the subject first to be discussed its last clause, which is as follows:

"We recognize fully the great economic advantages possessed by you in the fact that you now enjoy practically a monopoly of the shoe machinery business—but we submit that your patrons should be permitted to share in these advantages, by you so modifying your charges for the service rendered, as to return only a fair amount on your invested capital."

I told the manufacturers that they had a very mistaken idea as to the amount of profit that we derived from the amount of capital we had invested in the business; that we should be very glad to do our business based upon the return per dollar invested in the business equal to the return that they obtained on the dollar that they had invested in the shoe business as
609 successful shoe manufacturers, and I called their attention to the success which had attended the growth of the Hamilton-Brown Shoe Company, the Roberts, Johnson & Rand Shoe Company, the Peters Shoe Company and the Brown Shoe Company, all St. Louis manufacturers. I then went on to explain to them what a large amount of capital we had to have invested, how much we had to spend in developing our machines, what a large stock of parts we had to carry, both at the factory in Beverly and around at all of our shops, explaining what we had to carry at St. Louis in order to give them proper service to keep the machines in operation, the large amount of service that we furnished to maintain those machines in condition to turn out their product—in a broad sense endeavored to educate them from the machinery manufacturer's standpoint as to the amount of capital that was absolutely necessary to have invested in the business.

The discussion of this one clause proceeded until we adjourned for luncheon. After we came together again I found that the manufacturers who did not reside at St. Louis were intending to stay only that day and that the St. Louis manufacturers had planned to devote only that day to the discussion of the matter that they had asked me to come to St. Louis to see them about. I told them that it was impossible to make any substantial progress in the short time they had allowed.

Finding that only one man of the whole party had ever been to our Beverly factory I told them that if they would visit our factory at Beverly I would take up the matter of this paper, Plaintiff's Exhibit 154, and would have a conference with them and go very fully into every matter. The manufacturers finally agreed to do that.

In May, 1911, substantially all of the gentlemen whom I met in St. Louis came to Boston and visited the Beverly factory.

The next day, on May 23, we had a conference at my office and I then handed the manufacturers the memorandum of Defendants' Exhibit 40 (Record, p. —), as to which Mr. Rand testified, which had been prepared by me to set forth the conditions under which they could obtain machines on the independent lease plan, in order that they might understand exactly under what conditions they could have machines from all departments of the company without any of the principal ma-
610 chines in any department being limited to use with any one of the principal machines of any other department. I read this memorandum to the manufacturers myself. At their request I gave them a copy of that memorandum to submit to their counsel, who they stated was Mr. Brandeis.

In the afternoon of that day we met again at the Touraine, where the whole subject was very fully discussed. At that meeting I was asked if I would prepare a statement showing the initial payments that would be required under the independent leases. I prepared such a statement, which is defendants' Exhibit 41 (Record, p. —), and which sets forth the initial payments to be made when manufacturers took machines on the independent leases under the conditions set forth in the memorandum of Exhibit 40.

I took this statement to the hotel on the next day to give to Mr. Jackson Johnson. I found that he and all the other manufacturers, except one or two, had left Boston, but Mr. Rand remained and I handed him the statement as the secretary of the so-called alliance.

That finished my conferences with those gentlemen except that Mr. Rand asked to have prepared a statement showing what it would have cost the Roberts, Johnson & Rand Company in initial payments if they had fitted up their factories under the independent form of lease. I prepared that and handed it to Mr. Rand, and he told me that he would report the figures and statements that I had given him, and that I should hear from him within a few days. I had complained to him that the manufacturers had parted from me without an understanding as to

whether the methods under which I had shown them they could do business with us were satisfactory to them.

The next I heard from Mr. Rand was his letter to me of June 14, which is plaintiff's Exhibit 155. My reply to that letter on June 19 is plaintiff's Exhibit 156. That closed the incident. Excepting as I have testified, I never had any response from

611 Roberts, Johnson & Rand or the Shoe Manufacturers' Alliance to my memorandum of defendants' Exhibit 40 and my accompanying suggestions about initial payments for independent leases.

Referring to defendants' Exhibit 40, the statement under the heading "Goodyear welt and turn shoe machine and Goodyear outsole rapid lockstitch machine" represents the practice of the United Company at that time and prior thereto, from the date of the formation of the company and since that time, at least up to the time when this suit was brought. The statements in the three paragraphs under the heading "Goodyear auxiliary machines" in defendants' Exhibit 40 are true of the company's practice with reference to the marketing of the Goodyear auxiliary machines at that time and prior thereto and up to the time of the bringing of this suit.

The statement (in defendants' Exhibit 40) under the heading "Rex pulling-over machine" was true of the practice of the company at that time and prior thereto from the time when we first put out the pulling-over machine, and it has continued to be true of the company's practice up to the time this suit was brought. We had been prepared to furnish machines in that way at any time and had issued leases in that form.

The statement in the first paragraph under the heading "Rex pulling-over system—Auxiliary machines," in defendants' Exhibit 40, has reference to the pulling-over department alone, and the statements in the three following paragraphs under that heading were true of the practice of the company regarding the pulling-over auxiliaries up to the time the suit was brought.

The statement under the heading "Consolidated hand method lasting machine—U. S. M. Co. lasting machine, No. 5," in defendants' Exhibit 40, [is] true of the company's practice with reference to those machines. The statements in that exhibit under the headings "Metallic machines," "Heeling machines," "Clicking machines," and "General department machinery" are true of the company's practice and readiness to perform at that time and prior thereto and up to the time the suit was brought.

612 As regards the machines named in defendants' Exhibit 41, corresponding to machines which had been put out

by the constituent companies prior to 1899, the amounts of the initial premiums set opposite the names of those machines were exactly the same, respectively, as were habitually charged by the constituent companies prior to 1899. As regards machines which were not in existence in 1899 or which had not been marketed by any of the constituent companies, the initial premiums named in Exhibit 41 were exactly the same, respectively, as the initial premiums that the United Company had been charging right along whenever those machines were put out on the independent form of lease. Those same initial premiums have continued since then and are the premiums which are charged to everybody alike. Our offices all have lists.

Referring to the testimony of Mr. George A. Learned, a witness for the petitioner, regarding a conference which he had with me in the summer of 1911, Mr. E. P. Brown, our general manager, was present at that conference.

Mr. Learned had under lease from the United Company either two or three turn shoe-sewing machines, auxiliary machines to go with the turn shoe machines, heeling machines, and several machines from the general department; also, I believe, m'tallic machines—this is entirely from memory. He had introduced into his factory either one or two turn shoe-sewing machines obtained from the Haverhill Shoe Machinery Company, and had given up or stopped using our turn machines. He was using the turn shoe auxiliary machines and our other machines in finishing shoes made on those machines, although he had such machines as he had from us under the restricted form of lease.

So he was using our auxiliaries and paying us no royalty for their use, and the general department machines which we were taking care of and getting no return for. I pointed out to Mr. Learned the injustice of that situation as courteously and as nicely as I knew how to do. I used no threatening language of any sort, name, or description. I suggested to him that if he wanted to use the Haverhill machines I would be very glad to arrange his leases so he could and on equitable terms to him and to ourselves. The interview ended with, I supposed, perfectly good feeling on the part of both of us.

After that interview Mr. Learned wrote a letter to the company asking us to send him the terms upon which machines might be furnished him on the independent form of lease, and I did that.

613 At that interview I did not tell Mr. Learned that I would put him out of business; I never said anything which could be construed as amounting to that. I did not say: "You see what happened to Mr. Plant; he is out of business,"

or anything of the sort. I did not say that the least I would do would be to take all the United machines from him, or that he would have to pay royalty and that we would charge him six per cent interest on it. I did say to him that if he was going to use the Haverhill machines he ought to pay us what was due us up to the time when he came to that conclusion.

I next saw Mr. Learned about the first of December, 1911. He came to my office with Mr. Henry B. Endicott. I think Mr. E. P. Brown was present also, but I am not sure. Between the interview in the summer and this time in December I had heard that Mr. Learned was saying things about me.

At this interview in December I asked Mr. Learned if he had stated publicly that I had said to him that I would put him out of business. He admitted that he had been making such statements. I told him that such statements were, of course, entirely untrue and unwarranted by anything that had been said by me, and I thought it was due to me and to our company that he should say to the people to whom he had made such statements that he was wrong.

Mr. Learned admitted that he had undoubtedly been mistaken in his understanding of what I said, and he said to me that he would do as I asked and correct the misstatements that he had been making. Our parting was perfectly friendly.

We have never at any time taken Mr. Learned's machines out of his factory, and we have never done anything to interfere with his business in any way, shape, or manner. Up to this time he has substantially all the machines of the United Company that he had when these conversations took place, and has been using them on the shoes that he is making on the Haverhill machines. That is, he is using our turn auxiliaries and
614 our general department machines with turn machines of others and is not paying any royalty on them.

Referring to the letter which was shown to Mr. Learned while he was on the stand and which Mr. Learned did not agree that he had received, defendants' Exhibit 254 is a copy of a letter which I wrote and mailed to Mr. Learned, addressing and mailing it to Newburyport, Massachusetts, where his factory was located and which is his present address.

DEFENDANTS' EXHIBIT 254.

DEC. 27, 1911.

Mr. GEORGE A. LEARNED, George A. Learned Company, Newburyport, Mass.

DEAR SIR: While I have no desire to continue a correspondence with you in which, as shown by your letter of December 20th,

you so incorrectly record your spoken words to me in the presence of others, I cannot permit your letter of that date to close it.

Our conversation was as I stated it in my letter to you of December 18th, and if you now disavow that retraction of the untrue statements you have been spreading, I shall, both for myself and my company, hold you strictly responsible for all the consequences that may follow.

I never made to you any statement that "I would drive you out of business if you did not throw out the machines competing with ours"—either in words or substance—or any statement like it. On the contrary, at our first interview—August 24th—I told you we would give you independent department leases of all machines except Goodyear department machines (which you did not care to use) and sell you all general department machines, and this you acknowledged at our interview of December 5th, and if you allow this untrue report to remain uncontradicted, or seek to further spread it, you will do so at your peril.

Very truly, yours,

S. W. WINSLOW.

The WITNESS:

I recall meeting Frank W. Merrick and Charles Luitweiler at the Hotel Touraine in the summer of 1905. I met them at their request, conveyed to me through Mr. Sampson, and at the Touraine because they had expressed a reluctance to visit me at my office. I had known Mr. Merrick for a great many years, first as an inventor connected with eyeleting machines, although I do not that I had met him for several years prior to this interview.

615 Mr. Merrick claimed to have invented a wax thread sewing machine which they stated was in an experimental stage and did not claim that it was in condition to build. They wanted to dispose of that machine and of the inventions they had developed, and our conversation, at least on my part, was entirely devoted to a discussion of that particular machine.

The subject was opened up by my asking what they wanted to see me for and the substance of their conversation was that they wanted to dispose of their enterprise. I asked them what they wanted for their inventions and the interview really came to nothing.

As to Mr. Luitweiler's testimony that there was no talk about machines and that it was all with regard to their company; and that I asked: "How much money have you got?"; and that I said: "I will see that you never make a dollar"; and as to his testimony that I made statements about the business of Mr. Parsons, of Marlboro, and that I made comparison with a

roulette wheel; no conversation of that character took place. For one thing I never saw a roulette wheel in my life, and I am not familiar with the game. I did not use any such illustration and I did not tell them that I would never let them make a dollar.

The substance of their statements to me was in effect that they wanted I should pay a large price for these inventions which they claimed to have made, upon the basis that it would be cheaper for me to buy them than to let them continue to develop their machines. I told them that that sort of thing did not interest me. And in answer to some statement of that sort as to the amount of business they could do and how much money they could make and how valuable this whole thing was, I told them that I didn't think they knew what they were talking about. That is the substance of the situation.

I have done nothing to interfere with their business and we have not built any machines like theirs. We kept on building our own machines.

My reason for going to meet Mr. Merrick and Mr. Luitweiler was because I knew Mr. Merrick as an inventor in sewing machines and I should have been very glad to have employed him,
616 or if he had had a valuable invention I would have discussed that with him. I didn't seek the interview, and I had no desire to put him out of business or to prevent him from continuing his business.

As to the testimony of Charles S. Johnson, witness for petitioner, that he had some talk with me about a sale of the Tripp Giant leveler which resulted in the drafting of a contract which he refused to sign, and that I said to him that he had better sign it because we were going to have his business anyway; such a contract was drawn, but I did not tell Mr. Johnson that we were going to get his business anyway. Such language as I used was only such as I would use with anyone who was doing the same business that we were but was not producing to my mind as good machines as we were producing; it was not offensive or intended to be offensive in any way or to intimate to him that we would drive him out of business. We have competed with him right along; we have not interfered with his business.

As to the testimony of Charles H. Morse, a witness for petitioner, that in 1901 or 1902 I telephoned for him to come to see me at my office and said that I understood that he was putting out a tacking machine and a metallic slugging machine, and that I said: "You don't suppose that we are going to allow you to put them on the market," and that it would interfere with our business, I have no remembrance whatever of having telephoned to Mr. Morse or of having had any such meeting with him or of making any such statement to him.

At about the time Mr. Morse testified for the United States I met him here in the corridor of the courthouse. I greeted him and shook hands with him and remarked that it had been a great many years since we had met, to which he agreed. I asked him how long it had been and he placed a date back of 1899; I forget just how long ago it was, but he didn't remember having met me since the formation of the United Company. Accordingly
617 if I ever had any such conversation with him as he testified to it must have been prior to the organization of the United Company, but I don't recollect ever having had such a conversation.

Referring again to my interview with Charles S. Johnson about the Tripp Giant leveler, Mr. Johnson was not correct in his statement that this was in the winter of 1902 or the spring of 1903. The date of that talk was a considerable time after that. The interview in 1902 or 1903 was prior to the contract and he then wanted me to acquire their business, but I did not.

Defendants' Exhibit 255 is a photograph of our Beverly plant showing it as it is to-day. Building "A," at the front of the photograph, is 1,120 feet long. The building that we started with in 1903 was 520 feet long. At the same time we built building "B," which was also 520 feet long, and the third building "C" was somewhat less than that in length. There are wings connecting the three buildings which go to the full height of the buildings and contain the lavatories, washrooms, and tool rooms. The fourth building, which is separate from these buildings, is the foundry, and that was less than half its present size in 1903.

When we built these buildings we prepared for a capacity about twenty-five per cent more than the capacity of the three factories of the old constituent companies. We supposed that that would take care of our wants for a great many years, but we have made additions from time to time until we now have a factory twice as large as we contemplated in 1903. This is all concrete construction from the roof to the bottom floor.

Defendants' Exhibit 256 is a photograph showing the same building with the employees included. Practically all of the 4,000 employees are there.

Defendants' Exhibit 257, a circular which is entitled on the outside "An Industrial City, Edition of 1911," contains some views of the interior of the factory at that time.

618 Mr. CHOATE. I should like to put this in, not for the reading matter, which may be disregarded, but for the views of the interior of the factory building, including a hospital and operating room, an industrial training school for the operatives' children, a clubhouse, playgrounds, and a boat club.

The WITNESS. A statement in my previous testimony as to the order of the operations of certain principal machines was incorrect. The correct order of the operations of that group of machines is lasting machine, welt-sewing machine, loose nailing machine, outsole stitching machine, heeling machine, and slugging machine.

In 1899 the Consolidated & McKay Lasting Machine Company had in its employ 89 roadmen and instructors. About half of those were what we term road force to-day.

I have previously testified that in connection with the organization of the United Company neither I nor my associates conceived the idea of acquiring the ownership and control of all concerns engaged in manufacturing and dealing in all kinds of shoe machinery. I have never conceived that idea from the time the company was organized up to the present.

619 In my previous testimony with respect to the cost of equipping a factory with machines in 1899 under the then form of marketing and the cost of equipping a factory with similar machines in 1911 on the wholesale plan, in making my computation I took all the machines that a manufacturer could obtain from us in 1911, including those of the kinds put out by the original constituent companies, and such other machines as we had developed; and the prices which I assigned to the 1899 machines, corresponding to machines sold by us in 1911, were our sales prices in 1911, but I set no figures against machines which were nonexistent in 1899.

In regard to my testimony that before the beginning of this suit manufacturers were allowed either to purchase general department machines or to take them upon lease, since we discontinued leasing the machines there have been a great many requests from shoe manufacturers that they be allowed to take the general department machines upon leases, as they were allowed to do before the bringing of this suit. We have been importuned time and again.

Q. What instructions have you given, or caused to be given, to your agents, the road men, regarding advice to customers respecting the machines of other shoe-machinery manufacturers?

Mr. CHOATE. I only offer to show what the policy of the company, as represented by the instructions of the president to his subordinates, has been with reference to any attempt to restrain the trade of other people in shoe machinery.

Mr. FOWLER. I wish to make the objection and reserve an exception on the record.

PUTNAM, J. It is ruled out.

Mr. CHOATE. Will your honors save us our exception on the question?

PUTNAM, J. If you will state the grounds of your exception. Put them in the record, too.

Mr. CHOATE. We offer to show that Mr. Winslow has caused directions to be given to his agents and road men to advise customers of the United Company's machinery whenever a
620 competing machine was better adapted for the work that they had to do to use it in preference to the United Company's machines, and also to show that on many occasions that has been done—that advice has been given.

PUTNAM, J. We rule it out upon the ground that, after requiring a bill of particulars from the United States upon that topic, in view of that bill of particulars we can't allow the door to be opened in that broad way.

Cross-examination:

Until 1850 or 1860 shoes were made almost entirely by hand. The development of shoe machinery began about 1863 and the first important machine was the McKay sewing machine. That same character of machine is used to-day in making the McKay shoe and there have been very few improvements up to within five years.

At that time the machine-made welt shoe was unknown. Some welt shoes were made by hand. The welt machine was first invented quite a number of years prior to 1890. I can't give you the exact date.

I can't give the date of the commencement of the development of either lasting machines or welt sewing machines. The early patents will show that development. I can not tell who invented the first welt sewing machine or how many had been invented and patented before 1899.

A number of lasting machines had been developed before 1899. One of these was the McKay & Copeland. The Continental was not a lasting machine; it was used to drive the tacks when the hand operator had pulled the leather over on the last, and the operation of pulling the leather over was done entirely by hand. The Boston lasting machine was a similar device. I can't tell offhand what was the difference between the Boston and the Continental machines.

There were also the Chase, Consolidated hand method, and Ideal lasting machines. The Copeland rapid laster preceded the Ideal, the Ideal being an improvement on it. All these various machines were made before 1899, and at least two welting machines had been invented before that and were on the
621 market. There were also a vast number of metallic machines and a number of heeling machines that were

being manufactured by the McKay Company on the market at that time. The layers that make up the heel were attached together by hand and nailed or secured together by glue, and then the heel was attached to the shoe by the heel-attaching machine.

It is not correct to state that all the developments of the principal machines were made before 1899; they have all been developed since 1899.

The pulling-over machine is a principal machine which has first been manufactured since 1899. I don't recall any other machine that does what has been termed a principal operation which has been developed since then.

Many auxiliary machines have been devised since 1899, and the principal machines have been improved in just the same sense that they had been improved for many years prior to 1899. It is, perhaps, proper to state that the invention and development of the principal machines and bringing them up to the state of the art in 1899 was all done under the old system, while the other has been done under our system.

I was connected for a number of years with the lasting-machine business. I was not president of the Consolidated & McKay Company, but was adviser to the manager, Mr. George W. Brown. I was one of the directors, but was not principal owner of the company. When the United Company was formed, I had been connected with the company about nine or ten years. The company was then making the McKay & Copeland, Chase, and Consolidated hand-method lasting machines, the Copeland pinking machine, and three types of hand tackers.

The manufacture of the Boston lasting machine, which was really not a lasting machine, had ceased because it had become obsolete in the development of the art. That company also owned or had the right to manufacture the Continental machine.

622 The McKay & Copeland machine was a bed laster and operated upon heavy work, such as brogans and miners' boots especially. I never knew of its being used on any kind of a welt shoe. Welt shoes were not manufactured in those heavy grades, and the swinging of the toe head of the machine made it impracticable for use on lightweight shoes. Moreover, it was not intended to handle the character of upper leather used in the manufacture of welt shoes. It was, perhaps, both because the machine was too heavy, and because there was something wrong with its construction for lightweight shoes. It wasn't used for that purpose.

I don't see how I can state whether its construction could have been modified so that it could have been used for light shoes. It had not been, and never has been since. I know of no reason why we should try to modify the construction of that machine. Other machines have been developed since that time to last welt shoes.

The McKay & Copeland machine was possibly used on a few McKay shoes, but not very many. The shoes lasted on that machine were standard screw, pegged, and loose nailed.

That machine was not devised by Gordon McKay and Copeland. Mr. McKay was a large owner of the company and had advanced a great many thousands of dollars for the development of lasting machines. Copeland was an inventor who had invented some things used in that machine.

The Boston lasting machine was a power tacker placed upon a stand, and it inserted a tack when a shoe was pressed up against the nozzle of the tack driver. In the use of that machine the operator placed the shoe and the upper upon a jack, just as for hand lasting, pulled over the leather on to the inner sole, exactly as by hand, and each time raised the shoe against the nozzle of the machine, and that automatically set off the mechanism which drove the tack.

623 That machine was used principally on women's light McKay sewed shoes. It was not used on welt shoes and could not be used on a welt shoe. That was partly because it wouldn't bring the upper up against the shoulder of the insole and partly because it didn't leave the tacks standing up as they have to be in the manufacture of a welt shoe. In 1898 I don't think a quarter of one per cent of the shoes lasted were operated upon by the Boston laster. Previous to 1898 it had been used more extensively.

The Consolidated & McKay Company ceased manufacturing the Continental machine some years before 1899 because there was a lot of machines that had gone out of use. We had a stock of them that had been abandoned. That machine was very similar to the Boston and operated in the same general way.

The Consolidated hand method lasting machine was invented by Matzeliger about 1885; that is, he then commenced work on the development of the machine. That was a step-by-step machine, which was intended to duplicate the hand operation except that the machine drove the tack as the upper was drawn over by the pincers of the machine.

That machine was used very largely by shoe manufacturers, and a great many had been put out prior to 1899.

Q. Wasn't that machine used to some extent in lasting welt shoes?

A. It was not, except I would like to modify that answer in this way: At the date of the formation of the United Company in 1899 the Consolidated & McKay Company were at work endeavoring to adapt or improve that machine so that it could last welt shoes. It did have out experimentally in the factories of manufacturers a very few machines. I don't think there were twenty of them, but at the date of the formation of the United Company it was not a successful welt lasting machine. It would not last the toes of the welt shoes properly.

The machine required no development to last the heel of a welt shoe, because the heel of a welt shoe is lasted exactly the same as the heel of a McKay sewed shoe. Lasting the side of the shoe is broadly the same as the McKay, except the necessity for shoving the leather up against the shoulder of the inner-
624 sole and leaving the tacks standing up so that they may be pulled. In 1899 the machine would leave the tacks standing up and it would last against the shoulder of the insole in the shank fairly well, but not as it really should. We were still working on that machine; we were still endeavoring to perfect it and make it a good welt lasting machine.

That machine was known as the nigger-head machine. I don't think a lease had been prepared for that machine, but if it had been it was used for a few months in the year 1898 to cover those machines which were placed experimentally in factories.

It was our intention to perfect that machine so as to make it an efficient welt lasting machine, and we did that. My recollection is that sometime in 1900 we had succeeded in making the machine satisfactory for lasting some kinds of welt shoes. It was commercially successful for some kinds of work, but not for all. It was successful for light work, ladies' shoes, and men's light-weight shoes. It was not used on men's shoes to a very large extent, although it was used on men's shoes.

Q. And could have been used more if you had not had a better machine for that purpose?

A. Well, I can't quite answer that question that way, and if you would like to have me I will explain it.

Q. Now, Mr. Winslow, with reference to this Chase machine, that was the principal machine that the Consolidated & McKay Company owned before the formation of the United Company, so far as welt work is concerned?

A. Yes, sir.

The work that the Chase machine was doing was almost entirely welt work.

The sixteen or seventeen million welt shoes made in 1898 were not all lasted by machine. I can't tell what per cent of them was lasted by machine, but shall be glad to look it up. I can't say offhand whether my statement on direct examination that about half the shoes being made in 1898 were being lasted by machinery applies to welt shoes as well as to other shoes. I will look this up.

625 Q. Upon what machines was this welt lasting being done at that time?

A. Almost entirely by the Chase lasting machine.

Q. That is, the Chase lasting machine was used on men's welts?

A. On men's welts.

Q. And women's welts?

A. No; it wasn't used on women's welts.

Q. Was it used at all on women's welts?

A. I don't know of a single factory or a single machine that was being used to last women's welt shoes.

Q. Well, what was the trouble with the Chase machine that it couldn't be used on women's welts if it was used on men's welts?

A. Well, the upper leather that is used in the manufacturing of women's welt shoes is of course very much lighter than that which is used in the manufacturing of men's shoes, and especially in those days the leather, a great deal of it, was what was called glazed kid, which was a hard finished but light kid leather. The toe head of the Chase lasting machine moves in a horizontal plane across the surface of the sole of the shoe. It had no vertical motion to smooth out the wrinkles that will always appear, and would always appear, in the drafting in of the leather, and that could not be taken out very well by the wipers of the Chase machine.

Q. Then, as I understand, the Chase machine did bring the upper up to the shoulder of the seam; there was no trouble about that?

A. The Chase machine would wipe the leather up to the shoulder at the toe of the shoe.

Q. But it wouldn't quite wipe the wrinkles out of the toe?

A. That is the fact; yes, sir. It wouldn't last the toe properly for a woman's shoe.

The Ideal machine was not developed until about 1895 or 1896. There were very few women's welt shoes that

626 were being lasted by machine, and a comparatively small number of women's welt shoes that were made by machine in 1899.

The trouble with the Chase machine to last women's shoes was that it wouldn't do the work properly. Perhaps I can best explain it by describing the operation of the Ideal machine. In that machine the toe head which carries the wipers has a vertical movement and in lasting a woman's welt shoe that head was moved up and down several times to continually stretch the leather a little at the junction of the edge of the last where the leather is turned over; that construction enabled the Ideal machine to iron out the wrinkles that would appear at that edge. The Chase machine could not do that.

Women's welt shoes are now lasted very largely upon the hand-method machine. I can't state whether they are
627 lasted at all on the No. 5. I should think that they could be lasted on the No. 5 machine, but it is quite a heavy machine for that purpose; and in order that you may understand the situation, wherever they can last a welt shoe satisfactorily by the hand-method machine they use that in preference, because it is a speedier machine for lasting than any of the other machines, but the quality of work which can be done by that machine, especially around the toe, is not considered by the manufacturers so high grade as when you can use the bed machine.

The forward movement of the wipers over the last is substantially the same on the Chase machine and on the No. 5, and on all bed machines. The toes of all shoes lasted almost exactly alike.

This vertical movement of the wipers at the toe which was in the Ideal machine is also in the No. 5 machine, which, in respect to that particular feature, is manufactured on the principle of the Ideal. I think that there is not a model of the No. 5 that shows that. I saw a model yesterday that shows other improvements of the No. 5.

It is not true that at the time the United Company was formed the Consolidated & McKay Company and the Goodyear Company were the only companies putting out lasting machines. My remembrance is that the Seaver Company was putting out lasting machines. That company was one of the acquisitions made by the United Company.

In 1899 the Consolidated & McKay Company was developing the hand method machine for the lasting of any welts, not for the lasting of women's welts particularly. The Chase machine was doing practically all the lasting of welt shoes which were being lasted by machinery, but it was not lasting women's welt shoes.

The Copeland rapid laster, from which the Ideal was developed, belonged to the Goodyear Company. In 1899 the Good-

year Company was putting out the Ideal machine in connection with its other Goodyear machines and, as I stated, it was used practically altogether on women's welt shoes; it was used on other shoes to a very slight extent. The explanation of that is that in some factories several different kinds of
628 shoes are made, that is, a man may make men's and women's shoes in the same factory and he would of course endeavor to do both kinds of work on the same machine if he could. I think there were very few men's shoes that they were trying to last on the Ideal machine.

I can't state the reasons why the Ideal machine could not last men's shoes as well as women's shoes. I was not very familiar with the machine and, in fact, I really knew very little about it at that time, except the kind of shoes it was used upon. I am not quite qualified to state whether it was capable of being used successfully on other shoes, and cannot give the real shoemaking reason why it was not so used. That machine was put out by the United Company for some time, up to the time when the No. 5 machine superseded both the Chase and the Ideal machines. As regards the use of the No. 5 machine on women's shoes, as I stated before, manufacturers prefer to use the hand method welt lasting machine on women's welt shoes or any welt shoes where quality is not the first consideration, because it is a faster and more economical machine. As to whether the Ideal machine could have been easily developed into a machine that would have lasted men's welts successfully, as a matter of fact, I don't know anything about that.

I think that after the formation of the United Company it was manufacturing every single lasting machine that was being put out in the United States except the Seaver machine; and in 1900 we acquired the Seaver Company. At that time there was litigation existing between the Consolidated & McKay Company and the Seaver Company on patents granted to the Consolidated Company in 1895 and 1896, and the Seaver Company was not a doing a successful business.

In 1899 the principal machines that were being manufactured by the Goodyear Company were the welting machine and the outsole stitcher. An inseam sewing machine is a welt sewing machine. Both expressions are used in our leases.

At that time the Goodyear and Eppler welt machines were being made in the United States; there was also the
629 Globe machine. I don't know whether you could truly describe that as being put out at that time. No others occur to me at the moment.

The Globe machine was acquired by the United Company in 1901. I don't understand that the Globe machine was being used in the manufacture of any welt shoes at that time. I think it was being used to manufacture a few turn shoes. As to whether it would do welt work, really I was not very familiar with that machine. It was only acquired at the urgent solicitation of Mr. Bray, as I testified. It was not what might be termed a successful machine. The two welting machines that were being specially pressed on the market at that time were the Goodyear machine and the Eppler machine.

The Richardson machine was a development of the McKay machine, some years afterward.

The development of the Goodyear welt sewing machine was a great many years before the Eppler was brought on the market, although I would not say that the type of Goodyear machine then being placed upon the market was considerably older than the Eppler. My best remembrance is that the Eppler machine was invented about 1892. The Goodyear machines had been in course of development for a great many years. I have stated how many Goodyear machines were out, but I do not know how many Epplers were out. I shall be glad to see if I can give a list.

After the formation of the United Company none of the Eppler machines were called in. Many of the manufacturers changed within two or three years from the use of the Eppler machines to the use of the Goodyear machines. When they changed the Eppler machines were returned to the factory. I can't say whether we kept a record of all the machines that were returned; in the early days the factories were separated, and our data are not as complete as later. I will endeavor to ascertain whether I can furnish a list of the Eppler machines that were returned to the factory. I don't know how many are still outstanding, but I can find that out, if there are any.

630 I was not familiar with the officers of the Eppler Company, but knew Mr. Keith, the president, very slightly at that time. I think I had no interest either direct or indirect in the Eppler Company on February 7, 1899, the date of the issuance of the charter to the United Company; and I think no officer or stockholder of the Consolidated & McKay Company had acquired any stock of the Eppler Company previous to that time.

As I remember the transaction, after or about the time the United Company was formed the entire capital stock of the Eppler Company was acquired by a number of gentlemen interested in the formation of the company. I can not tell you who

they were. They either furnished the money necessary to acquire the Eppler Company or they advanced the money to the United Company. Those gentlemen were not interested in the Consolidated & McKay Company. I do not know of any particular shoe manufacturer who acquired a large part of the stock of the Eppler Company.

Q. Now, in your negotiations for the formation of the United Company with the Goodyear people, wasn't the fact that the Eppler Company was under the control of your company used as an inducement to the Goodyear Company to prevail upon them to enter into that combination?

A. Not in the slightest degree. In fact, the acquisition of the Eppler Company or any movement to acquire that was not entered into until after our arrangements to come together had all been settled.

To the best of my remembrance it was settled that the companies would be consolidated two or three weeks before the obtaining of the charter; the work leading to the obtaining of the charter was started immediately after the decision to put the companies together was arrived at.

Our negotiations were in progress from about the middle of 1898, and the first meeting was at Mr. Elmer P. Howe's office on State Street. The Eppler Company was not considered at the beginning of those negotiations, nor was the McKay Company; just the Consolidated & McKay and the Goodyear Companies.

631 The McKay people were approached because I advised it, and I advised it because I believed that with the metallic and heeling machines and the Goodyear machines and the lasting machines we could give better service, get a better product from the machines, and give better results both to the manufacturers and to ourselves.

It is true that there would be a broader field to operate in. But the real reason was, first, to give the service of all of these machines and get a better result from the co-operative action of the machines together. That is to say, the unification of the service would allow those machines to be kept in continuous operation, giving a larger productive capacity to them and at less expense than in any other way.

The McKay people were approached by me personally and I first mentioned the matter to Mr. James J. Storrow; but I did not approach him before the decision to form the United Company had been completed and we had started to obtain the charter. I do not know whether we had really obtained it then.

I cannot say whether I spoke to Mr. Storrow before the Eppler matter was taken up, or whether the Eppler matter was suggested by Mr. Storrow or by myself. I did not approach any of the Eppler people myself but had an outside party, Mr. Henry B. Endicott, go to them. I cannot say with whom he conferred and I gave him no directions about that. I knew he was acquainted with the parties managing the Eppler Company, of whom Mr. Keith, so far as I knew, was one of the prominent men. I did not even know who the president of the company was.

I think Mr. Endicott reported to me but do not remember what his report was. I think the negotiations with the Eppler people continued only a few days. I never conferred personally with them. I do not recall with whom he was conferring and I do not know that I ever knew. I think Mr. Keith was in this country at that time.

Q. But it was fully understood with the Eppler people that they were to come in, before the charter was ever obtained?

A. No, sir. To the best of my remembrance the charter was obtained and no word had been spoken to either the McKay people or the Eppler people.

632 The best of my recollection is that the charter had been obtained for the United Company, or was in process of being obtained, before any steps were taken with the McKay people or the Eppler people. I had nothing to do with obtaining the charter.

Just before the consolidation in 1899 the Eppler Company was manufacturing a welt machine, an outsole stitching machine, and two auxiliary machines. The Goodyear machines were making Goodyear welt shoes and the Eppler machines were making Eppler welt shoes. The Goodyear Company was making a welting machine, an outsole stitching machine, and auxiliary machines that performed the same functions that the auxiliary machines of the Eppler Company did, and a number in addition.

I have already described the difference in the character of the welt sewing machines; they were both making welt shoes. My best remembrance is that the Eppler machines were not being used to manufacture any women's shoes, for the reason that the Eppler machine laid the chain stitch in the channel while the Goodyear machine laid it on the outside. Both machines were being used in the manufacture of men's welt shoes.

The distinction by which Goodyear welt shoes and Eppler welt shoes were principally known was that in the Eppler welt

the chain stitch was in the channel while in the Goodyear welt it was on the outside of the welt.

The Goodyear machine was being used to manufacture women's welt shoes as well as men's, but I do not know of any women's welt shoes being made by the Eppler machines.

The Goodyear Company had an outsole stitcher that was being used on Goodyear welt shoes, and the Eppler Company had an outsole stitcher which was being used in the manufacture of Eppler welt shoes.

633 It is not proper to say that the Goodyear Company was making auxiliary machines which were doing exactly the same service with reference to the Goodyear shoe that the auxiliary Eppler machines were doing with reference to the Eppler shoe. The respective machines were intended to perform the same operation, but they did it in distinct and different ways.

Those auxiliary Eppler machines were the rough rounder and the stitch separator. The Goodyear rough rounder was intended to perform the same operation in the manufacture of the shoe but did not do it in the same way; and that is true as to the other auxiliary machines made by the Eppler Company, so far as they made them.

It is true that in obtaining the Eppler Company we did not broaden our field, because it was embraced in the Goodyear Company machines.

Q. I believe you claim the Eppler machine was not hardly as good as the Goodyear welting machine?

A. It wouldn't make as good a shoe; no.

Q. But it was being put upon the market?

A. It was in use.

Q. At that time, in the same territory in which the Goodyear machine was being put upon the market?

A. It was in use at that time, and they were manufacturing Eppler welt shoes with it.

As I have testified, we took the Eppler Company to get rid of the litigation which then existed, and for no other purpose. We didn't want the machine; it was just to get rid of that existing litigation. I have no recollection as to how much the Eppler stockholders were paid. I have endeavored to find out and I can not. I have not any doubt that they were paid as much as $100,000 but I can not state whether it was as much as $200,000. I do not remember how much the capital stock of the Eppler Company was but I would be glad to ascertain. The stockholders of the Eppler Company were paid cash and no stock of the United Company was issued to them. Stock was issued in exchange for the stock of the other companies.

The McKay Shoe Machinery Company at that time was engaged in manufacturing metallic fastening machines and heeling machines. It owned the McKay Metallic Fastening Association and the McKay & Bigelow Heeling Association, I think. I can not tell how long it had been in existence. It was doing a very large business. I think the Metallic Association and the Heeling Association, the stock of which was owned by the McKay Company, were putting out nearly all the metallic fastening machines and nearly all the heeling machines that were being made in the United States.

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It is not quite true that in the formation of the United Company there was concentrated into the hands of that one company the manufacture and sale or lease of practically all the welt sewing machines, lasting machines, and auxiliaries with those machines, metallic fastening machines and heeling machines, that were being made in the United States. It is true that the best machines for heel attaching and for metallic fastening, welt sewing, stitching, and lasting were brought into one company. But there were in use in the United States a great many heeling machines, for instance, that were not being made by the McKay Company. There were some welt sewing machines, or machines that could be used for welt sewing, that I think at that time were used principally for turn sewing, that were not being made by either of the constituent companies. I think all the lasting machines except the Seaver were being made and put out by the Consolidated & McKay Company. Of course, machines which did the same work that was done by the auxiliary machines of those companies were being made by several other parties. To the best of my knowledge and belief the metallic, heeling, lasting, welt sewing, or outsole stitching machines that were being made by other parties were inferior to those owned by the constituent companies.

The concerns that were making heeling machines and metallic fastening machines at that time, so far as they advertised in the trade papers here in New England, are all found in the list which I filed (defendants' Exhibit 221) of manufacturers who were making shoe machinery and findings at that time and who advertised in the trade papers in New England.

I can't from memory specify some of the concerns in the United States that were making heeling or metallic fastening machines at that time. But they are all found on that list, so far as they advertised in the papers. I can't say how many others there were. I haven't attempted to look those up. As to whether I know of any other concerns, I have said I don't

remember any others. There might have been others, you know.

635 That list indicates the machines that those concerns were making only as it is shown by the advertisements. I will endeavor to furnish a list that will show what heeling and metallic machines were being made at that time, besides those made by the McKay Shoe Machinery Company.

Q. Mr. Winslow, was there as much as one per cent of the business of manufacturing heeling machinery and metallic machinery in the United States done in 1899 by other concerns than the McKay Shoe Machinery Company?

A. I can't answer that question, Mr. Fowler, because in the first place I was not at all familiar with that end of the business. And in the second place I haven't looked up any data since then, and I really don't know how one could get at those facts. Many shoes, you know, are heeled and many are not heeled, and there is no way of telling how many were heeled, so that it would be almost impossible to get that data. I would be glad to do the best I can, but I haven't done any work along those lines. If you would like to have me, I will see if I can find out.

Q. Unless you want to I will not especially ask for that.

A. All I mean to say is—I haven't tried to get that data, so I am unable to answer you.

I think that no inventory was taken of the Eppler Company's assets and that no inventory of any of the companies was taken at the formation of the United Company. The entire stock of the McKay, Lasting, and Goodyear Companies was obtained, and as I remember the properties were not transferred to the United Company until some time in 1900 or 1901, and I think no inventory was taken until then.

The stock of the United Company was issued at about its worth; that is, there was no water in the stock. It is my remembrance that during the last month or so before the formation of the United Company there was practically no change in the market price of the Goodyear or Lasting Machine Com-

636 pany stock, but that the McKay Company stock did increase in price shortly before the company was taken in. The market price of the Lasting Company stock had been above par for a long time and the Goodyear Company stock had been away above par for a long time. My remembrance is that the McKay stock of which par was $10 was selling at $8 or $9 previous to the beginning of the negotiations.

In forming the United Company we issued five million and a half of the United Company stock for five million of the par value of the McKay Company stock, as I remember it. I do not

recall the ratio as to the Lasting Company stock, but I think the figures stated in the bill are correct.

We did not pay the McKay people any more than their stock was worth; it was worth more than the market price.

I should not say that the Goddus were engaged in the business of manufacturing metallic mechinery; I have explained that fully in my direct examination. They did not have a line of machines; my remembrance is that they had three or four separate, distinct types of machines.

637 There was litigation between the McKay Company and Goddu, senior, his sons and the Goddu Company. That was based in the idea that those inventions belonged to the McKay people because they had employed Goddu. I can not state whether suits had been brought for infringement of patents but, so far as I know the facts, infringement of patents was claimed by the McKay Company.

I do not know whether the development and manufacture of those machines would have been stopped by the litigation. The machines as machines were stopped, but not because of the purchase by our company. They were stopped by the action of the minority stockholders of the Goddu Company. The minority stockholders took such a position regarding the Goddu Company that the United Company couldn't have developed those machines if they wanted to. The stock that I have particularly in mind is that stock that was represented by Mr. Van Wagenen and his daughter.

The United Company purchased a majority of the stock of the Goddu Company. I do not think it followed as a fact that that stopped the further development of their machines. They were not developed afterwards. The properties of the Goddu Company were not subsequently conveyed to the United Company. We did not buy all the stock of the Goddu Company but got enough to get control of it.

The Davey Pegging Machine Company was manufacturing pegging machines. I do not know of any other company engaged in making pegging machines at that time, but there were thousands of pegging machines in the country then. There were two other types of machine, the Varney and the New Era, which were out in 1899.

All the stock of the Davey Company was owned by the Lasting Machine Company and it came into the United Company as a part of that company. The Lasting Machine Company had acquired it two or three years before that. I would be glad to state if desired what that pegging machine had to do with our

638 lasting machine business. The Davey pegging machine was used for fastening the outer sole by wooden pegs.

Such talk as there was regarding who should be president of the company and the formation of the company was between representatives of the Goodyear Company and representatives of the Lasting Machine Company. The McKay Company did not have anything to do with it. In those discussions the future policy of the company was considered only as I talked with Mr. Howe personally, as representing the Goodyear Company. I discussed with him the advantages to be gained by a consolidation of this kind; and also the policy to be pursued by the company in the ways I have already testified to—the advantages to the manufacturers and to ourselves of bringing the companies together, in the economy of manufacture of the machines, and in the quality of the services to be rendered to the manufacturers. There was not the slightest difference in our views with regard to that matter. As to whether or not I agreed with the sentiment expressed by the Goodyear Company in its address to its stockholders, I never saw that until after it was issued. After these various negotiations and consultations I believe the officers and directors of each company issued an address to the stockholders of that company, and I believe those circulars are in evidence.

Referring to the statement in the first paragraph of the Goodyear Company's circular (plaintiff's Exhibit 152) in regard to the advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery, I had nothing to do with that circular and did not see it until it was issued. I do not know what Mr. Howe meant by that but I can state what I think he meant, if desired.

As to whether the original purpose of the United Company was set forth in the following statement in that circular:

"The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock."

639 We should not have hesitated to buy machines that we thought would advance the art of making shoes. I can not state it any better than that.

I was present at practically all the negotiations that were had leading up to the formation of the United Company, and I immediately became its president. I have been largely instrumental in directing the affairs and policy of the company from that date to the persent; so that if anybody knew its purposes and objects, I did. It was not one of the objects of the company to purchase from time to time other shoe machinery companies, and it was not our intent in the sense in which I am being interrogated.

George W. Brown was treasurer of the United Company and I suppose he had authority to execute certain kinds of contracts. I was in constant communication with him about various matters affecting the company and its policy.

I do not know what Mr. Brown referred to by the recitations in the agreement dated September 11, 1899, between the United Company and Henry W. Peabody & Company, as follows:

Whereas the United Company has acquired control of the boot and shoe and leather working machinery made by the following named corporations, doing business in said Boston, namely" * * * "and contemplates the acquiring of control of other lines of boot and shoe and leather working machinery and boot and shoe findings, except leather linings, lasts, and finished boots and shoes."

I never saw that contract until long afterwards. I think we were negotiating then for one of the eyelet making companies. I could not say whether eyelets were the only line of shoe machinery or findings that the company contemplated acquiring at that time. I was abroad at the time that contract was made and had been abroad for two or three months. I have no doubt that there was some other concern that they were negotiating with then as to which that language perhaps applied, but I knew nothing about the language or the contract until long after it was made.

640 As to the auxiliary machines, the function of the channeling machine is to cut a channel around the edge of the sole in the manufacture of welt shoes, preparing it for the welting machine.

Q. Now when that channeling machine is doing that work, it is not working in conjunction with the welting machine, is it?

A. No, sir; not if I understand your statement correctly.

Mr. CHOATE. What do you mean?

Mr. FOWLER. I mean just exactly what I say.

The WITNESS. Preparing the work for the welt sewing machine.

Q. But it is not doing it in connection with the welting machine. That is, the welting machine is not operating upon that piece of sole leather at that time at all?

A. Not the insole channeling machine.

Q. Well, is there any channeling machine that is operating in conjunction with the welting machine—that is, when the welting process is going on?

A. No, sir.

Mr. CHOATE. By the words "in conjunction with" you mean at the same time, I suppose?

Mr. FOWLER. Of course I mean at the same time.

The WITNESS. Well, of course, it is not connected up with the welt sewing machine, if that is what you mean.

The operation of the lip turner is a separate process from cutting the channel. After the channel is cut the lip of the channel is pulled up through an independent operation on a different machine. That is true with reference to everyone of the auxiliary machines. There are no two that operate on the same shoe at the same time. Those operations are as separate and distinct as the lasting operation and the welting operation, only they are not so far removed from each other.

We call those auxiliary machines because they prepare the work for the operation of the machine which sews the upper and the inner sole and the welt together. We call the welting, lasting, heeling and metallic fastening machines principal machines because they perform operations which are treated as measuring operations for the entire set of machines and because their operations preceded in most cases the development of the auxiliary machines. The auxiliary machines in many instances did work that had been done by hand and their development succeeded the development of what have been termed the principal machines. Quite a number of the auxiliary machines have been developed by the United Company.

I testified that when our factory was originally constructed we contemplated that there would be an increase in our business of 25 per cent within a decade, but that it turned out that we had miscalculated and we had to extend the factory much earlier than we had expected. This increase was partly because of the additional auxiliary machines that we had developed in
641 the meantime and partly because of the increase in the manufacture of shoes.

Immediately after the organization of the company our welting, outsole stitching and lasting machines were doing about all the welting, outsole stitching and lasting that was being done in the United States.

Q. And so with your heeling and metallic fastening machines?

A. Not so much the heeling.

As to whether the increase in our business did not result from the increase in the number of shoes made, and particularly of Goodyear shoes, rather than from any increase in the proportion of our business to all business done, there were several reasons which led to the increase in our business. I have testified that when the United Company was formed about 50 per cent of the shoes being made were being lasted by hand, so that one source

of the growth of the business was the increasing of lasting by machinery. Another source of the growth was the increase in the manufacture of Goodyear welt shoes and the consequent adoption by many manufacturers of auxiliary machines that were in existence in 1899. Further reasons were the development of new machines, and the increased use by manufacturers of the heeling machines and heel attaching machines.

Substantially all our machinery is made in that one factory at Beverly.

We regard the Rex pulling over machine as a principal machine. There are several auxiliary machines that go along with it. We charge a royalty on that system, one on the Goodyear system, and one on the lasting system.

It is true that the auxiliary machines are put out in connection with the other machines and that we charge no separate royalty on any one of the machines that we call auxiliary machines. We do not charge a rental on the auxiliary machines when they are taken on the initial premium basis.

Prior to the formation of the company the initial premium on the automatic leveling machine was $500, with no royalty, except that it was to be used in the manufacture of shoes that had been welted and stitched on the Goodyear machines. That
642 amount did not represent the cost of building the machine and allowed nothing for the money invested in tools or spent in producing the machine. The same amount has been charged up to the present time when the machine is
643 taken on the initial premium basis. In 1905 the manufacturer was given the option to take that machine at an annual rental of $35 a year, without initial premium. When he takes it on the initial premium basis he pays $500 and it is still our machine and it comes back to us when the lease expires. All that we realize out of it is $500 and what repair parts go into the machine.

Of course in all cases we furnish the service to take care of the machines. The manufacturer pays for the repair parts, but our men put them into the machines and keep the machines in working condition.

My remembrance of the lease is that when the manufacturer takes the machine on the rental basis there is a return charge if the manufacturer returns the machine before the expiration of the lease, and he has to keep it in good and efficient working condition.

Correcting my statement that none of the auxiliary machines had any royalty, after the introduction of the pulling over machine and the development of some of the auxiliary machines

in the pulling over department, we did establish a royalty on some of the auxiliary machines and reduced the royalty on the pulling over machine if the manufacturer did not take the auxiliaries. That is, we have a form of lease by which a manufacturer can take the pulling over department auxiliaries on a royalty. My remembrance is that the royalty was one-eighth of a cent for each of the auxiliaries, or half a cent for the pulling over machine with no royalty for the auxiliaries. That applies to the principal auxiliary machines of the pulling over department, some of which are not used in the manufacture of certain kinds of shoes, which was the reason for this change.

644 Q. Referring to the leases, did not the Consolidated & McKay Company before the formation of the United Company have a form of lease for its Consolidated hand method lasting machine that required an initial payment of $300, but the use of the machines was unrestricted, entirely unrestricted, as to other machines?

A. That was prior to the formation of the United Company?

Q. Yes.

A. Yes, sir.

Q. That is, it was tied in no respect to any other machine, either a lasting machine or a machine of any other kind?

A. I should have to see the lease in order to testify to that fact.

Another form of lease (plaintiff's Exhibit 9), used by the Consolidated & McKay Company for the hand method machine before 1899, required that the machine be used to its full capacity and that if additional machinery was needed for performance of work of this character such additional machinery should be obtained from the Consolidated & McKay Company.

That company had a third lease (plaintiff's Exhibit 10) which was prepared for the Consolidated hand method welt lasting machine, a different machine which we were attempting to develop for welt work. That lease contained the same provisions as the lease of Exhibit 9, except that the royalty of Exhibit 10 was one cent a pair and the royalty of Exhibit 9 was five-eighths of a cent. The royalty of Exhibit 8 was one-half a cent with an initial premium of $300.

The lease of Exhibit 10 was made in April, 1898. We had a few of the welt lasting machines out in the factories.

645 The lease of plaintiff's Exhibit 16 was adopted in September 1900, and was the first lease for the Consolidated hand method lasting machine adopted after the formation of the United Company.

Q. That lease provides for a return charge of $150 and a minimum royalty of $15 per month, less one-twelfth per month when

the machine is wholly idle, and it contains the full capacity clause, the prohibitive clause——

A. I don't know what you mean by that.

Q. I mean the clause which prohibits its use on shoes operated upon other than welters, stitchers, turn sewers, or metallic fastening machines which belonged to the United Company.

A. It limits the use of the machine to certain shoes which have been operated upon by other machines.

Q. By those particular machines I have mentioned?

A. Yes.

Mr. FOWLER. It also contains the exclusive use clause, and contains finally the clause which gives the company the right to cancel the lease, provided the condition of any other lease existing between the lessor and lessee is violated.

The WITNESS. It contains the option on the part of the lessor to cancel lasting machine leases if the lessee does not use lasting machines obtained from the lessors exclusively.

In December, 1900, we adopted the lease of plaintiff's Exhibit 15, which was gotten up for the Consolidated hand method machine for lasting welt and turn shoes.

Q. And this lease contains the same provisions as Exhibit 16, except the prohibition clause does not extend to metallic fastening machines?

A. In Exhibit 16 the reference to welt and turn shoes, of course, had no bearing. It was only inserted in there so that if the machine, after it was in the manufacturer's factory, was remodeled without coming back to our factory, so as to do welt work, or welt and turn, then it would become Exhibit 15 646 and would have that same standing. It had no bearing as it was to welt and turn work, and was, in fact, limited to the lasting and metallic departments as used. Of course that machine wouldn't last welt and turn work. That is, it was not adapted to the manufacture of welt shoes. It was got up for use by manufacturers manufacturing McKay and other shoes.

None of these leases prohibited the use of these lasting machines in connection with McKay sewing machines. As to whether this clause in section 4 of Exhibit 16 applied, so far as sewing machines were concerned, to welting, it didn't really apply, for that machine could not be used for that purpose. At this time we did not own the McKay machine and were not putting out any McKay machines at all. It is not true that these sections were arranged with that in view. That has no bearing upon the question whatever. There was no limitation in connection with heeling machines either. So far as welt sewing or turn stitching is concerned, that clause in section 4 should be out

of the lease. I don't know why it was ever in there. That particular lease limited the use of that lasting machine to footwear that was operated upon by metallic machinery, so far as they had those machines.

The second lease, Exhibit 15, was gotten up especially
647 for welt work, and that limited the use of the machine, as stated in paragraph 4, to shoes welted or stitched on our machines or turn shoes made on our turn sewing machines. As a matter of fact, that machine was not used in the manufacture of turn shoes.

The lease of Exhibit 14 is the unrestricted lease for the consolidated hand-method lasting machine, and the right is reserved to the lessor if the machine shall not earn $75.00 per year to take back the machine, returning to the lessee one-third of the amount that he has paid. This lease contains the full-capacity clause and an option reserved to the lessor relating to exclusive use, to be exercised under certain conditions.

As regards the premium stated in section 5 as $50.00, this lease happens to be a lease for a rebuilt machine. The regular initial premium was $300.

Clause 7 reserved a right to the company, in case the manufacturer did not use our machines to their full capacity, or for lasting the shoes that he could last on our machines, to take out our machines. This was not obligatory, but gave us that right. As to whether it gave us the right to cancel this lease and all other lasting-machine leases, it gave us the right, if the manufacturer did not last on our machines all his shoes that he lasted by machinery, to take out our lasting machines.

As to whether this lease also contained a clause which authorized the cancellation of all the company's leases in case there should be a breach or default of any condition in that or any other lease, for not paying his royalty or in the conditions recited down to and including the sixth clause, I believe.

Q. Taking the leases of the Consolidated & McKay Company, you did put out a lease which required an initial payment and which did not tie this machine to any other machine of your company at all?

A. I think not in 1898. Will you give me the particular exhibit that you refer to?

Q. That was Exhibit 14.

648 BROWN, J. Is that what you mean, Mr. Fowler, 14?

Mr. FOWLER. I think that is it, your honor. That is my recollection. I think that is the one which had no tying clauses in it at all.

The WITNESS. Of course, I don't know what you mean by tying clauses.

Q. I don't mean 14. I mean 9 and 10.

A. 10?

Q. It is No. 8.

A. No. 8? Yes.

As to whether it is true that clause 8 of plaintiff's Exhibit 14, which you say is the clause giving the company the right to cancel all leases in case of breach or default in connection with the condition of any lease did not appear in any lease of any company prior to the formation of the United Company, I understand that the language of that clause 8 of that lease is in effect in previous leases and I also understand that this lease only assumes that the manufacturer has lasting machines from the company. It does not assume that he has machines in any other department.

Q. Well, it refers to leases of all machines.

A. Well, he is not limited in the use of that machine, is he, to work done with any other machine?

649 Referring to Exhibit 20, it is not true that the United Company never had any unrestricted form of lease for the McKay & Copeland machines. Such a lease was in use by the Consolidated & McKay Company, and was continued in use by the United Company up to 1903. Then we adopted a lease, four years after the company was formed.

Q. Which required the payment of an initial premium, a minimum royalty of $125 for each consecutive twelve months, and contained the full-capacity clause, the prohibition clause applying to welting, stitching, metallic, and heeling machinery—the exclusive use clause applying to both lasting and tacking devices—and the clause giving you the right to cancel all leases in case of breach or default of conditions?

A. I think all of those conditions were contained in the prior lease of the Consolidated Company, except in the limited license, and the price had been reduced in 1903, or before then. This is the only lease that the United Company ever got up for the McKay & Copeland lasting machine, because there were very few of those machines ever in use, I think only 200 or 300, and I think a great many less now.

I stated that nearly all welt work was done on the Chase machine. It is not true that we never had any unrestricted form of lease for the Chase machines.

Comparing the lease of plaintiff's Exhibit 19, which was the United Company's form of lease for that machine, adopted in June, 1901, with plaintiff's Exhibit 7, the lease used prior to the

formation of the United Company, which was continued in use up to 1901, the lease of Exhibit 7 contained a requirement to take additional machines from the company. The royalties were as stated in the schedule at the end of the lease, and I think particular attention should be called to paragraph 12. With the exception of the limitation in the use of the machine as to welt work in paragraph 4 of Exhibit 19, with the turn sewing machine, metallic machine, and so on, and except that in that lease the royalty had been reduced permanently to half a cent, I think there is no difference, in effect, between the two leases as I understand them. In the lease of Exhibit 7 the manufacturer
650 was definitely required to take additional machines and not to have them in his factory for certain purposes, such as reducing the price of hand lasting or controlling his hand lasting, or influencing a trade with any other lasting-machine company.

Any manufacturer could have had the previous lease, Exhibit 7, if he preferred it. That was always open to any manufacturer. Of course, the royalty requirements were very much in excess of what they were under the United lease, as shown by the schedule.

I think no figures have been put in that show how many lasting machines have gone out or are out under the unrestricted system, except as to the hand-method machine. The Chase machines did not increase in number after 1899, but all that were out were out under the old leases up to 1901.

The lease for the Ideal lasting machine that was used by the Goodyear Company tied the Ideal to the Goodyear system. As to whether there has ever been any unrestricted form of lease for the Ideal machine, I don't recall any different lease ever used by the United Company for the Ideal machine from that of plaintiff's Exhibit 18. It contained the full-capacity clause, the restrictive clause applicable to the welt stitching and turn sewing machines, and the exclusive-use clause. It has been the company's policy to give the manufacturer an unrestricted lease for the Ideal machine if he wanted it.

In the statement which I gave to the St. Louis manufacturers in May, 1910, there were given the conditions under which they could have those machines which they would really want, and the only lasting machines included in that statement were the Consolidated hand method and the No. 5, because those were the machines in which they were interested.

I do not understand that the independent and the restricted leases are more sharply drawn as to the No. 5 lasting machine than as to any other machine. I understand that the two forms

are distinctly and sharply drawn as to all of the principal machines.

By the Goodyear leases the welt sewing machine is limited to use upon work that is to be stitched upon the stitching machine, and the stitching machine is limited to work that has been welted on the welt-sewing machine. They are limited to the manufacture of Goodyear welt shoes, which can only be made by the use of the two machines together. All the other machines in that department are regarded as auxiliary machines, and each of those is limited to use upon shoes that have been operated upon or are to be operated upon by the Goodyear welting and stitching machines. Auxiliary machines doing any of the operations that are performed by any of our auxiliary machines

651 may be obtained from anyone and used in connection with the welter and stitcher. One reason for this is that our royalty is measured by the principal machines. As a matter of fact, we wouldn't lose anything if work was done upon the same shoe by some other auxiliary machine.

Some auxiliary machines for welt work are being manufactured by others, but a great many of them are not manufactured by any other companies. For illustration, we have developed machines that do work always done by hand before.

I will state one reason why the United Company has not adopted a form of lease for the Goodyear auxiliary machines which would permit them to be used in connection with welters and stitchers manufactured by other companies, upon payment of a royalty. Of course our machines are all taken care of in the factories, and the expense of taking care of individual machines would be very large and no prices have been established for that. It was not the policy of the Goodyear Company, and we have developed along the same lines trying to furnish to manufacturers the greatest amount of help that we could in manufacturing Goodyear welt shoes, and it was only on these lines that we could see how to give the manufacturer the greatest value for the money. We spent large sums in developing these auxiliary machines, perhaps much in excess of their value as machines, or what we could charge for, but there was every incentive to do it to develop the manufacture of the shoes made by the principal machines.

652 Q. Suppose a manufacturer owns a welting or outsole stitching machine which he has purchased outright from someone else, a machine which will do as good work as your machine, wouldn't it be profitable to the manufacturer to obtain the use of your auxiliary machines in connection with it? Now, I ask you that because you stated you wanted to do the best thing for the manufacturer.

A. Of course, such machines have got to appear before there is any practical answer to that, haven't they, Mr. Fowler? There never have appeared yet machines which have brought that question forward. I think I am fair in saying that the company would be quite prepared to meet that condition when that condition developed. Up to the present time we have spent enormous sums of money, spent it intelligently, done all we knew how, to advance the art of making the Goodyear welt shoe cleanly and following the lines that were adopted years prior to the formation of the United Company. I am unable to think of any way in which the public or the manufacturers could be better served, by which we could give them as much for their money, as the method that we are now pursuing. It is perfectly manifest that it would be impossible to equip a small manufacturer's factory with the number of auxiliary machines that we have, or that he would need, to keep in the race with the big manufacturers under any other system than that that is now employed.

It is not fair to state that we will not permit one of these important auxiliary machines that we have developed and are developing to be used in connection with a welter or outsole stitcher made by any one else. We have followed the line which in our judgment would give to the manufacturers of shoes the greatest amount of value for the money that we received, and there has been no other reason for it.

Q. Regardless of reason, Mr. Winslow, isn't it a fact that you won't permit of one of these important auxiliary machines that you have developed to be used in connection with a welter or out-sole stitcher made by anybody else?

A. Well, that question hasn't arisen, Mr. Fowler. I therefore don't think that your question is a fair one. Should a welter or a stitching machine that was the equal of our machine be developed and offered to the manufacturers, and the developer of that machine or that concern were not attempting to use it as a blackmailing proposition, or attempting to make shoes and call them Goodyear welts when they were not, I can quite understand our company to be perfectly willing to establish prices for its auxiliary machines.

653 As to whether with that provision in these leases there is no inducement for anybody to develop any machine, that is not true. It is not fair to assume that our development along a certain line, which was adopted prior to the formation of the United Company and which has developed the manufacture of Goodyear welt shoes 500 per cent, was because we wanted to keep anybody out.

Mr. FOWLER. I am not assuming anything.

The WITNESS. That is what your questions lead to.

We have never had occasion to formulate any lease which would permit these auxiliary machines to be used with anybody else's principal machines.

Let me state this: We have, as a matter of fact, established or put riders on leases to allow some of these auxiliaries to be used in the manufacture of McKay sewed shoes as a separate proposition where manifestly our own interests so far as the development of Goodyear welt shoes have not been advanced.

654 We have always done that sort of thing. I can give you instances of it six or seven or eight years ago. The assumption that these leases that you have put in, or have been putting in, represent the policy of the company is entirely unfair. We have riders continually, when a condition arises, by which we let manufacturers use machines. They only represent just exactly certain notices as to how those machines should be used for the money that is paid for them, nothing more.

My recollection is that the heeling-machine lease of the McKay Company required the manufacturer to pay royalty on all the shoes that he made, and if he did not do all of his work on heeling machines held from the McKay Company they had a right to cancel all of his leases.

As to our reason for tying the heeling machines to the welting machines in 1904, we felt that we were entitled, if we took off all the initial payments that we received for the Goodyear system of machines, to have the manufacturer use our heeling machines, or entitled to limit it to use with the welter and stitcher.

Q. In what way did you expect to obtain any compensation for ceasing to charge the initial premium?

A. Well, it was just so much more volume of business in a given factory. Take a factory that was making a small number of shoes; they would want a heeling machine, they would want a complete outfit. The consecutive operations of the machines would be much better; the cost to the company would be much less of keeping those machines in condition to operate.

Q. That is, you expected to get your compensation by requiring the operators to put in more heeling machines; isn't that true?

A. No; that isn't.

Q. Well, would there have been any additional compensation if it had not brought about the use of your machines?

A. Well, the productive capacity of a series of machines of course depends entirely on the way the work travels through the machines—the regularity of operation. One machine broken down—take a heeling machine obtained from someone else and suppose it is broken down, the operation of the rest of the machines preceding that is very likely to stop. The manufacturer of the heeling machine may not be one who furnishes any service with the heeling machine; in fact, I don't know of anyone that does. I think you should always remember that our company is the only one who furnishes service to keep the machines in condition to operate.

Of course this helped to develop the manufacture of Goodyear welt shoes by making it easier for the manufacturer to increase his line of those machines or to enter into the manufacture of Goodyear welt shoes, and in that way it would call for
655 more heeling machines. The heeling machines that a manufacturer takes from us on those terms are limited to work that has been welted and stitched on Goodyear machines, but the Goodyear leases do not require him to heel those shoes on our machines or to take heeling machines or any other machines from us. Our object in inserting that clause in our heeling-machine leases was not to increase the number of machines of ours they were using, but to increase the productivity of the machines. If we could increase our business I suppose there would be more machines, but what we wanted to bring about was the productivity of the machines that were in use.

A manufacturer starting in business who wanted our heeling machines would not have to take our welting machines; he could take them under the independent lease.

As to my previous testimony that the additional machinery clause was omitted from all our leases before 1907, I should have added, in connection with the independent metallic lease of Exhibit 33, that I have not felt quite at liberty to bring this lease into harmony with the other leases because this lease was prepared in accordance with my agreement with the manufacturers, and I felt that I might be accused of doing something different from the understanding. That is the only reason that the lease of Exhibit 33 has been allowed to continue in that form. That provision, however, is not what I have called the additional machinery clause, but it amounts to an option clause. The manufacturer does not agree to take additional machines. The condition in the lease, that if he does not all metallic machinery can be taken out, is equivalent to the option clause I have referred to in the seventh clause.

As to the lease of plaintiff's Exhibit 34, printed in 1911, that form of metallic lease continued down from 1901 substantially the same, but I do not understand that the manufacturer breaches that lease if he puts in any other metallic machinery.

It was in consequence of the increased price of copper that we limited the use of the metallic machinery on the restricted lease to work that had been done on certain other ma-
656 chines. That was in 1900. In February, 1901, all of the manufacturers had presented to them the option of taking the restricted form of lease or the independent form of lease. Every manufacturer in the country had the option to take either form of lease. He could take one and change over within a year or two or he could take the other one and change over at any time during the life of the lease.

Q. Well, what was the price of copper when you made that change—tied those machines together?

A. My remembrance is that it was sixteen and one-half or seventeen cents.

Q. Didn't the price of copper go down the very next year to twelve cents?

A. I don't think so.

Q. Where it was the year before the formation of the company?

A. It may have gone down the next year.

Q. If it went down to twelve cents, why didn't you untie the machines then?

A. And tie them up again when it went to twenty-six?

Q. If that was what was troubling you, why, yes. Why didn't you tie them and untie them as copper went up and down?

A. That is not a practical proposition. We did not increase the price of material existing at the time when the new company was formed. At that time or at any time since the manufacturers who took their machines and paid ten per cent more paid it just the same when the copper went to twenty-six cents as they did when it was sixteen or when it was twelve. It is practically impossible to change the prices in material. And it has been the desire of the company to maintain as low a price as possible.

Q. So when you tied those machines together you meant for them to stay tied regardless of the price of copper?

A. That is not a fair statement, Mr. Fowler. Every manufacturer knew what the price of material was that he was paying. He had a perfect right to take those machines and pay ten per cent more than that—if it was fifteen cents, it would be a cent and a half a pound—and retain those machines just as long as he wanted them. He knew it was the policy of the company not to raise prices or change them if they could help it.

Q. Isn't that placing it on a different basis from what you did?

A. It has been the desire of the company to maintain as low prices for the material or as low royalty, if you please to put it that way, as was possible, and they adopted a method which was approved by the manufacturers, as shown by the
657 leases they took; was approved by the committee representing the manufacturers. We could, of course, have raised the price of material, which would automatically have raised this ten per cent afterwards. There was no agreement on our part to maintain the price of material at that price.

Q. You say it is approved by the manufacturers as shown by the leases they took?

A. Yes, sir.

Q. Did they have any option about it?

A. Certainly they did. Every manufacturer in the country had his option to take either form of lease he pleased. He could take one and change over for a year or two; the other one he could take any time during the life of the lease.

Q. I mean he had to do one of the two things, pay ten per cent more for his material or take the restricted form of lease. That was the option you say they had so far as these metallic machines were concerned?

A. Why, surely. That was the option that the manufacturer had.

Q. How was it, Mr. Winslow, you expected to get more revenue by tying these two classes of machines together?

A. Well, that seems to be kindergarten, but I will try to answer it. The limitation of the use of metallic machines to shoes that had been lasted on our machines would seem to give us, if the manufacturer adopted that form, an increased business in his factory, or a surety of increased business at a lower cost, or the same amount of business at a lower cost, because we could take care of those two sets of machines in the same factory at a lower cost than we could one, couldn't we? I mean proportionately to the income.

Q. Then you were expecting to make your revenue by not increasing your business, but increasing the efficiency of the service; is that it?

A. Decreasing the cost of the service and treating the metallic machines in the broad sense like auxiliary machines. Supposing that we did not get any revenue from the metallic machines, and yet the manufacturer used some other machine from which we did get a revenue, and the use of the machine from which we get our revenue was not delayed, because we were looking after

the other machines, it is manifest that our income or profit resulting from that business would be better than it would under other conditions.

658 When we adopted this lease we had two alternatives, of which one was to raise the price of the material and leave the leases as they were. The committee of manufacturers suggested raising the prices 25 per cent. I suggested to them an initial payment form of lease. They preferred this type of lease and I gave them just exactly what they asked for. That only raised the price of the material 10 per cent, an infinitesimal amount, nowhere near what the increase in price to us had been. And any manufacturer that wanted the machines could have them.

While the restricted form of lease could not increase the number of our machines in use the two sets of machines were used in unison. The cost of the care of those machines was less per unit, and increased efficiency resulted because the same concern would from its branch office attend to the metallic machine so that it would not be delayed, or attend to the laster so that that would not be delayed.

It is true that at that time our company was about the only one that had any metallic machines or any welting or stitching machines in the factories in this country. To the question why our service in repairing and keeping up these machines could not have been just as efficient then as it was afterwards, the best way I can answer is to ask, Why didn't we raise the price; or, in other words, Why didn't all the manufacturers take the machines on the independent leases?

As to whether, as a matter of fact, the price of copper has been fluctuating all the time, up and down, yes; but the price of the material for the metallic machines was really established many years before 1899, and we were confronted by the condition that Mr. Willson brought to my attention. I could not see any guaranty that the price would go down or that it would not go higher, and in fact since then it has gone up a great deal higher. I am sure the price of copper has averaged a great deal above twelve cents ever since 1899.

659 As to what advantages a manufacturer has who takes the unrestricted leases over a manufacturer who takes the restricted leases altogether, I believe a manufacturer is better off if he uses all our machines in series. Under the unrestricted lease he has to pay a very considerable sum of money in order to equip his factory, which he didn't have to pay under the restricted lease, and after that the only practical difference was that he had the option of taking out all of one class of machinery. As to whether under the restricted system he had to

take out all the machinery, no; there never has been any time when we would not have arranged on equitable terms with a manufacturer to take out any of the machines in any one department. I think you state it backward.

The manufacturers believe that we have the best machines, and they take them, first, for that reason. They take them on the limited lease system because it costs them less to equip their factories and they have the money that they would otherwise have in machinery to use to buy leather and other articles that they use, and they turn that money over two or three times a year. They know by experience that the life of a machine, while sometimes a long period, is many times a short period, and since the United Company was formed they have seen many improved machines. They know that if we improve a machine which they have without the license payment we will put the improved machine in their factory and take out the old one without any cost to them.

Q. Well, substantially what you say is that at any time a manufacturer should come to you and want to change from one form of lease to the other, why, you would say: "We will change."

A. We will change upon an equitable basis; yes, sir.

Q. By his paying those initial premiums he could put the machine in on the unrestricted lease?

A. On equitable terms; that is all.

I do not think it is any advantage for a manufacturer to take metallic machines on the independent lease; I never have thought so.

Clause 7 of Goodyear lease of plaintiff's Exhibit 23, which was used until 1905, contains the option clause, and plaintiff's Exhibit 24 contains the same clause. I think it is a fact that

660 every Goodyear lease that we have gotten up contains that clause. Clause 6 of Exhibit 24 requires that the lessee shall pay royalty on all shoes that are welted and stitched by machinery, that is, welt shoes, and does not confine it to shoes welted and stitched on our machinery.

I have testified that the pulling-over system was developed by the United Company. There were no pulling-over machines at all until they were invented and developed by the United Company. We first developed the pulling-over machine, and then a number of auxiliary machines which accompany that machine and prepare the work for it and finish the work after that machine has done its work.

Q. Now, the sixth clause of Exhibit 37, as I understand it, limits the use of this machine upon shoes which are operated

upon by welters, stitchers and turn sewers, lasting machines, pegging machines, metallic fastening machines, and heeling machines manufactured by your company; that is, it is tied to all of them, as I understand it.

A. It limits the right of the lessee to use the machine upon shoes which have been operated upon by some of those machines; that is to say, he can't use it on shoes which have been operated upon—upon which those operations have been done not on machines leased from us.

The use of the machine is limited to shoes that are lasted on the Consolidated hand-method lasting machine; that is, the lessee did not have the right to use this machine on shoes lasted on the Chase machine or on the No. 5. That was because the machine was developed in the first place especially to work with the Consolidated hand-method lasting machine.

In no other lease was the lessee under obligation to take the pulling-over machine. The exclusive-use clause in the lease of Exhibit 37 was an error and was taken out as soon as it was discovered, as shown by plaintiff's Exhibit 38. No action of the company was ever predicated upon that clause.

In the alternative lease of plaintiff's Exhibit 39, printed in August, 1911, we charge the same royalty on the pulling-over machines when they are used in connection with lasting machines belonging to other companies that we do when used in connection with our own; no more, no less. The royalty is the same whether the pulling-over machine is on the independent lease or on the limited-license lease. The only difference is initial payment in one case and none in the other. I would like to

661 state that I think August, 1911, the date which Mr. Donham gave for the lease of Exhibit 39, was the date when that particular lease was printed. As a matter of fact, the other lease, changed so that it amounted to this lease, was adopted before that.

We adopted the full-capacity clause in our leases to protect our interests under the conditions that I have described in the manufacture of shoes, where the seasons are changeable, and where our entire return is dependent upon the use made of the machine. The same reason applies to the adoption of the exclusive-use clause, but it is not the only reason for the adoption of either clause. There must be something in the lease requiring use of the machines or there is no security that they will be used. Because there are two seasons and because we have to furnish machines to take care of the peak of the manufacturer's load, there must be something to secure us properly for the use of the machines throughout the season. Otherwise,

the manufacturer might use one of our machines just for taking care of the peak of his load and use somebody else's machine all the year round.

The clause requiring payment of a minimum royalty, like many of the other clauses, is not enforced and never has been, excepting in cases of very great necessity to properly protect the company's interests, and then only in the way of asking the manufacturer to give up surplus machines. The original leases contained no means for recovering surplus machines. If a manufacturer's business decreased 50 per cent, he could retain a machine till the lease expired, and keep it idle. Such a condition showed us that we must have such control as would allow us to take back idle machines.

The practice has been, when a manufacturer had surplus machines arising from these or other conditions, to call his attention to the minimum clause and to tell him that if he wanted to return the surplus machine, the lease of that machine would be canceled. That clause is not enforced except to require adequate arrangements between our lessees and ourselves.

The minimum-lease clause originated a great many years ago. It is not entirely a logical developmemt, but, broadly speaking,

662 the minimum clause is based upon half the capacity or 33 per cent of the capacity of the machine, or something of that sort. The minimum has no bearing upon the amount of a reasonable return on our machines. In the Goodyear system, for example, the minimum is $15 per machine, if I remember correctly, but we are continually adding to the number of machines that we give to the manufacturer.

(At this point the United States offered to prove by Mr. Winslow the cost of manufacturing welting, stitching, No. 5 lasting, the principal heeling, the principal metallic fastening, and the Rex pulling-over machines. That was excluded on the ground that it was not a proper subject of cross-examination.)

I have testified that we have 18 stations throughout the country, covering all the principal shoe manufacturing centers and some that are not principal. In almost all of those places, certainly in all the large ones, the men have a room where they wait for calls from the manufacturer. Under this system the manufacturer usually telephones to the office and says that a certain machine is broken down and that he wants a man for that machine. A man is immediately sent out, unless all the men are out, in which case a man goes as soon as he returns. These men are all in our employ and we pay them.

We issue prices for repair parts which to the best of my knowledge and belief are the same prices that would be charged

by typewriter companies or by automobile companies or by any other company, like the Singer Manufacturing Company; with the regular profit that is entirely differentiated from the matter of service.

As to who determines whether a repair part should be put in a machine, we accommodate ourselves to the desires of the manufacturers. Sometimes the superintendent or operator settles it, and sometimes our man advises that a part be put in, while in some factories the practice is to ask our man to put the machine into working condition.

In fixing the prices of the repair parts we do not take into the slightest consideration the fact that we are maintaining a force to make the repairs. That never has had any bearing whatever upon those prices. I think the prices are the same, broadly speaking, as would be charged by any concern.

663 Our expenses in connection with keeping up our machines include the men's salaries and their expenses, the proper proportion of the rents and that sort of thing at the stations, and general items such as would go into making up the cost of this service.

As to the profit on our repair parts, I know that the prices at which we sell them are more in most cases than the factory costs of making the parts, but I also know, or at least believe, that the prices for the parts used on all the royalty machines, principal and auxiliary, are not on any different basis from the parts for the general department machines that we sell; in other words, the prices for parts have no reference whatever to the service. They have never been based upon that; they never have had and never will have any relation to it.

If it were not for the possibility that our competitors might obtain those parts at cost through manufacturers, we should have put those prices where the parts would not have cost the shoe manufacturer anything except the mere cost of manufacture. That is impracticable, but it would have only been furnishing the machines at less than their depreciation value, as we have done many things.

664 Referring to the allegations in the twenty-sixth paragraph of the bill filed by the United Company against Thomas G. Plant in the Supreme Judicial Court, as follows:

"In all of said leases and license agreements hereinbefore set forth under which the defendant leased machinery from the plaintiff, it is provided that the defendant shall obtain from the plaintiff, and shall pay therefor at the regular prices from time to time established by the plaintiff all the duplicate parts, extras, mechanisms and devices of every kind needed or used in oper-

ating, repairing or renewing the leased machinery. And the plaintiff says that it has always been ready and willing to furnish said corporation defendant such duplicate parts, extras, mechanisms and devices, and that they are frequently needed by the users of shoe machinery such as that leased as aforesaid by the corporation defendant; that the obligation of the corporation defendant to purchase the same from the plaintiff exclusively was of great value to it, and formed a material and valuable part of the consideration for each of said leases and agreements, and that it has each year during the continuance, and up to the first day of May, 1910, received very large sums of money each year and made considerable profits from the purchase by the corporation defendant of such duplicate parts, extras, mechanisms and devices, having received from the corporation defendant in the year 1909 on account of such duplicate parts, extras, mechanisms and devices purchased by it in said year alone the sum of $12,334.15."

I assume that those allegations were correct, and I assume that our dealings with the Plant factory are illustrative of the same character of dealings with all other factories in the United States; but I do not see what that has to do with the matter. I am willing to see whether it will be possible for me to make up a statement showing the amount that our company has realized from the sale of repair parts and the per cent of profit; but I want to make this statement at the same time: that the prices which are charged for parts are the same that would be charged if the machines were typewriters or any other machines, and have no reference whatever to the service end of the business.

665 Those parts remain our parts after they are inserted in the machine. Of course the manufacturer has that machine with those parts in it for the balance of his lease. When the lease is ended and the parts are returned to us, nine times out of ten the machine becomes scrap because of improved machines substituted for it. We necessarily own the scrap; we own the patents. It is a patent license we are discussing here and not really a machine.

Under our system a small manufacturer has practically the same advantages as a large one as far as machine equipment is concerned. A man who goes into the business with a capital of $1,000 pays exactly the same royalty and receives exactly the same service as a man who goes into the business with a capital of $250,000. I don't see that it necessarily follows that the small man and the middle man and the wealthy man produce a shoe, so far as the cost of doing these particular operations that are

done by our machinery, for exactly the same price. As to why it doesn't follow, well, what a manufacturer may pay the operative for his work may vary from one factory to another. That has nothing to do with what we furnish the manufacturer. We instruct the operatives; that is part of our service. Sometimes a manufacturer inquires if we know where there is an operative. Frequently the operatives register at some of our offices when they are looking for positions, but as a matter of fact we don't agree to furnish our machines with operatives.

I should say that it is true that manufacturers have an opportunity to exercise their skill and judgment in the purchase of materials with which the shoes are made. We don't control that, of course. It is true that the manufacturer has the opportunity to exercise his skill in disposing of his product. And of course we don't control the price of labor.

666 Q. But, as a matter of fact, under your system as you have testified, there is no opportunity for the manufacturer to obtain any benefits from his capital or from his skill, so far as the cost of the operation of machinery is concerned; isn't that true?

A. I should like to understand that question. I would like to consider it for a moment.

(The last question is read.)

A. I should think there would be every opportunity.

Q. Will you please explain, Mr. Winslow, the extent of those opportunities, and just what they are?

A. I don't think that is a proper question, Mr. Fowler. I would be very glad to take it up in detail, if you will ask me the questions so I can answer them properly. I mean I want to understand the question and I want to answer you, but I don't think that question is capable of a really intelligent answer.

Q. Well, you have said, Mr. Winslow, as I understand, that he had the opportunity to employ cheap labor, if he can?

A. Broadly, in the same way that you ask the question; yes, sir.

Q. But he hasn't the opportunity under your system, while using your machines, to go into the market and buy whatever machines he wants to use, has he?

A. Well, why not?

Q. Well, I am not going to argue with you.

A. Well, I don't want to argue with you, but you make a statement and then ask me to agree to it, and I don't agree to it.

Q. But you have said that you charge, for the use of your machines, the small capitalists exactly the same as the large capitalist?

A. Yes, sir.

Q. That is, in the operation of the machines which make shoes, each one is bound to pay exactly the same sum of money?

A. Well, you don't state that correctly, Mr. Fowler.

667 Q. Then will you please state it correctly, Mr. Winslow?

A. Yes, I will endeavor to. The price charged by the company per operation is the same to each manufacturer; that is, the charge of the royalty for the lasting operation is the same whether the manufacturer is a large one or a small one, and so on through. That is my answer to your statement.

Q. Then wherein, Mr. Winslow, has he an opportunity to derive any benefit from superior skill?

A. Just what do you mean, Mr. Fowler.

Q. I mean exactly what I say.

A. Well, then, I don't understand you.

Q. Now, Mr. Winslow, I think we distinctly understand what the point is, at least.

PUTNAM, J. Does any question remain unanswered?

Mr. FOWLER. I think not. I believe Mr. Winslow said he didn't understand the question, and I don't care to press it.

668 I can state only approximately how long Mr. Plant had been manufacturing shoes in Boston before the negotiations for the purchase of his properties were begun. My remembrance is nine or ten years. He had a lot of our machines in his factory. Of course, he had a lot of others also. I think his factory was entirely equipped with our machines so far as principal machines were concerned.

At the time of the purchase Plant had set our machines aside and put into the factory machines which he had built.

I had general knowledge for several years that Mr. Plant was engaged in trying to invent shoe machinery. I should think I first heard of his being engaged in that, or that he was going to, some time in 1904.

My remembrance is that Plant took out our machines on the first day of May, 1910. He began negotiations with me on the 16th day of June. I don't remember any communication from Mr. Plant previous to that time in the way of opening up negotiations. I had not sent any one to him previous to that time.

It was through Mr. Henry B. Endicott, a shoe manufacturer, that Plant first communicated with me. This is the same Mr. Endicott that was referred to in my testimony regarding the Eppler Company. He had no interest whatever that I know of in the United Company. I don't think he was even a

stockholder. Neither I nor the United Company paid him for his services in connection with the Plant purchase. He has never received a penny of compensation in any way, directly or indirectly, nor was he promised any. In fact he expressly stated that he would not accept any.

I first met Mr. Plant in June at Mr. Endicott's house in Dedham, Massachusetts, just outside of Boston. I didn't discuss the purchase of Mr. Plant's shoe machinery.

669 I discussed with Mr. Plant the purchase of his inventions and patents. I didn't know whether Plant had any real shoe machinery, but I knew he had inventions; quite a lot of patents had been issued. I knew what some of the inventions were, but some of them I did not know. I was not in a position to judge as to the value of his inventions. At that time I had not seen the embodiment of his inventions in any machinery. I understood that Plant was not making his shoes on our machinery at that time.

I did not know that Mr. Plant had at that time an option on or had purchased the Stanley property. I think I first learned of that when Mr. Plant stated in September what his proposition included.

I knew in a general way that Mr. Plant had control of the Stanbon property. Mr. Stanbon was a manufacturer of machinery in Lynn and made quite a number of small machines. My remembrance is that most of them were used in the sole-leather room or fitting room. I think our company made quite a number of the same machines performing the same operations that the Stanbon machines did. I did not know what kind of an arrangement Mr. Plant had with Mr. Stanbon. The fact is that the Stanbon matter was so unimportant that I didn't pay any attention to it. It had no bearing whatever in my mind upon the Plant proposition.

As to whether we paid $122,000 for the Stanbon property, we gave only the inventory value of the properties, and only because Mr. Stanbon was under option to Mr. Plant. Mr. Plant made it, as I remember it, a requisite of the arrangement that we should take Stanbon's property and then left it with Mr. Stanbon to agree whether he would turn in his property or not.

670 The Plant transaction extended over some time, beginning on June 16 and continuing to September 20. I should think there were some seven, eight, or nine interviews. None of these was at my place of business; two of them were at Mr. Plant's place of business, the two days that I went up there to look over the machinery. Mr. Endicott was not present at

all of my interviews with Mr. Plant, and I don't remember that Mr. Keith was present at any of them.

In my interviews with Plant I did not specify what particular patents I wanted, nor did I say to Mr. Plant at any time that I wanted his patents. I never made Mr. Plant a proposition for his patents or for his business in any way, shape, or manner.

At the first interview Mr. Plant made a proposition to me to take what he called his proposition, which I understood to cover what he had done in shoe machinery. That proposition was $6,000,000.

I have stated that the invention that enabled the operator to save about an inch of welt in each operation was one of the important inventions that I obtained.

Q. Did you propose to Mr. Plant at any time that you would buy that invention?

A. I didn't make any proposition at any time, from the time I first met him until the time that we parted, of any sort, name, or description.

There was no discussion about eliminating other things and getting that particular invention.

Other inventions that we acquired that were of special service in the development of our machinery were other inventions relating to the welt-sewing machine, inventions which related to the stitching machine, the lasting machines, rough rounding machine and heel attaching machines. As to whether I remember any other, no; but there were quite a number. I am just giving the important machines.

As to whether anything was said in our negotiations with reference to the purchase of those particular improvements, I didn't know what his improvements consisted of, as I have already stated. I didn't know what he had or the value of his inventions until I went up and examined them in September and had my experts examine them.

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My experts reported to me on the same nights that they made their examination. If I remember, it was September 14 and 15. The contract was not then closed. After they had pointed out to me what was valuable and what was not, and after I had seen it myself I did not talk with Mr. Plant at all about taking those particular things that were of value and leaving him with his body of machinery.

It is not true that the whole negotiations were with reference to purchasing the whole Plant business. The proposition that Mr. Plant made to me on June 16 was to sell all the interest he had in shoe machinery; that is, his inventions and patents.

I saw all of Plant's machines in operation that were at the T. G. Plant Company factory. He had a stop-motion applicable to the welting machine, which stopped the machine and reversed it, so that the shoe could be removed from the machine automatically.

Q. Were you not manufacturing at the same time the stitcher that had that motion?

A. No, sir.

Q. Wasn't there a stitcher being manufactured that had that motion?

A. No, sir. That was fundamental; it was a very important invention.

It is not a fact that our company was about the only concern in the United States beside Plant that was manufacturing a welting machine at that time. The Haverhill Company, R. H. Long, and, I think, the Boylston Company and the Duplessis Company, or its successor, were making welting machines, leaving out of account the large concerns in Europe who were advertising here.

Plant's machine was sewing the welt to the insole and upper and to that extent was doing the same work that our machine did. As a sewing mechanism it was not as good as ours. My understanding is that that mechanism, as distinguished from the

stop motion, the welt cutting and holding device, and the

672 welt-measuring device, was largely our old model of welter, and I understand that the machine infringed some of our patents. The Plant machine was not more liable than our machine to be chosen by the manufacturer who wanted to purchase or lease a welting machine, if he knew his business.

Q. Then you contend, as I understand, that your machine was a better machine for the manufacturer to take ~~than~~ *than* Plant's machine was?

A. I contend that the model G machine that we were putting out at that time was the highest development of sewing mechanism for attaching the welt, inner sole, and upper together that had been developed in the world up to that time. It did not embody the stop motion, the welt and thread-cutting and holding device, nor the welt-measuring device, which Mr. Plant had upon his machine.

Q. Now, I believe your position is that by obtaining those particular devices you could still further improve your machine?

A. I think it would have been a crime to the art of shoe manufacturing if they could not have been combined, those improvements that Plant had—combined with the best welt

and stitching machine that was in existence at that time, which was one that we had.

My contention is that by buying those Plant improvements we could make a better machine than either ours or Plant's.

After that transaction I think Plant did not make any more welting machines. I don't know of any. I have never heard of his engaging in that business since. He was not in business then putting out machines.

At that time the United Company had outsole stitching machines. It is not quite true that there were no special improvements in Plant's outsole stitching machine. He had developed a stop motion, and from the stop motion which he had in use we afterwards developed a very much better one; and the stitching machine that we are putting out, the model M, embodies two patented inventions that we acquired from Plant. Savings were effected by the Plant stitcher improvements.

Since the purchase we have put out outsole stitching machines embodying the improvements I mentioned. Neither Mr. Plant nor any other person could put them out, because the improvements were patented. We are putting them out.

Mr. Plant didn't manufacture welt shoes by the same system of machines that we did. He made a welt shoe, but welt shoes had been made by hand for years before the Goodyear Company got up any machinery. They were afterwards made by other machines, and they are to-day.

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Q. Regardless of the system by which it was made, what was the difference between the welt shoe made by Mr. Plant and the welt shoe made on your machines?

A. Understanding your question to mean—was the seam placed in the same way and were they made by substantially the same machines so far as the seams are concerned, they were made just the same as the Goodyear welt. His process of manufacture differed, in the preparation of the outsole and insole before they were attached to the shoe and afterwards in the completion of it, from the Goodyear process.

His process of manufacture differed in the preparation of the outsole and insole before they were attached to the shoe and afterwards in the completion of the shoe. I think Plant had to use a wider strip of welting than we did. The resulting product was a welt shoe.

The factory of the T. G. Plant Company had been operating, using those machines, since some time in May. I did not say that it had been successfully operating. I testified that Mr. Plant guaranteed the profits of the T. G. Plant Company to be as per the figures that he submitted, but those figures only came

up to the fiscal year ending, I think, in October, 1909. It could not have included the year 1910, because that year had not been completed. After our purchase the plant continued to operate, and it was operated with the same machines up to the fall of 1912, I think. I think it has paid dividends all the time, but I should have to look that up.

I testified that we had an understanding to sell the stock to some of the gentlemen who were operating the factory, provided they operated it successfully; and I testified that it was operating successfully; yes, sir. I testified that they had shown their ability to carry on that business. The sixty per cent of the stock of the T. G. Plant Company was not purchased because we wanted it. It was because Mr. Plant made it a part of his proposition. At the time of the Plant purchase I hadn't even thought of turning that property over to these other gentlemen provided they showed themselves able to operate it. I did not give that phase of the matter any consideration. I just knew that it was a valuable property. We could dispose of it. And I recognized the reasons why Mr. Plant wanted to dispose of it, and I thought it was worth all that I was figuring it in my mind.

674 It is true that by the Plant purchase the further manufacture of the system of machines that was in use in the T. G. Plant factory by a manufacturer independent of the United Company was absolutely stopped, if Mr. Plant's patents are very good. No one can manufacture those inventions if we own the patents. Otherwise than that anyone can make them.

I understand that the line of machines that Plant had installed in the Plant factory infringed about one hundred of our patents. I can not say whether every machine infringed.

Q. Isn't it a fact that Mr. Plant had quite a lot of machines manufactured and on hand in addition to those that were in operation in the T. G. Plant factory?

A. I think he had very, very few machines that were constructed to the point where they were capable of being operated.

Q. But isn't it a fact that he had the parts made for a great number of machines, but those parts had not yet been assembled?

A. Not completely; no. I don't think you could have assembled of those—just from memory—I don't think you could have assembled half a dozen machines, at any particular time.

Q. Isn't it a fact that he had enough repair parts on hand to supply quite a lot of machines for one or two years, and didn't you and he discuss that question?

A. No. Just what do you mean by that? We didn't discuss the question. He didn't have the parts on hand. I don't know.

Q. Didn't he send for you one time and show you a large row of boxes which contained repair parts, to convince you of the fact that he could furnish repair parts to machines?

A. I have no recollection of any such thing.

Q. No recollection of that?

A. Not the slightest.

To the best of my recollection Plant did not have machines of all the varieties on hand.

So far as I know, Plant had not obtained control over two or three factories for the purpose of manufacturing those machines. I have testified that I understood he had an option, and it so proved, on the Stanbon factory; he had an interest in the Bresnahan company at Lynn, and the papers in the case show what his connection was with Stanley.

I do not understand that Bresnahan was engaged in the manufacture of shoe machinery. I understand that Plant used
675 that as an experimental shop in developing inventions, like our experimental department at Beverly. I don't understand that he was using the Stanbon shop. My remembrance is that he had an option on the Stanbon business and that Stanbon himself was running it.

There was a contract with the Keighley Company, which I think gave him a selling agency for an inseam trimming machine. We did not take over the contract but assumed the responsibility of it. I think that he equipped the T. G. Plant shoe factory with inseam trimmers obtained from Keighley. The Keighley Company was located in New Jersey.

Plant also had a contract with the Stanley Company, which had a large machine shop and made a number of machines which are of the class [that] we have termed general department machines, and also McKay sewing machines. To determine whether the United Company was making a number of machines which accomplished the same results as machines made by the Stanley Company I should have to look through the list of all the machines the Stanley Company were making and compare them with those that we were making. My remembrance is that we had marketed machines for them, and if that were so, I can't quite see how we would be making machines for the same purpose; but we might have been.

I can't say whether the Stanley Company had one of the biggest shoe machinery factories in the United States outside of the United Company's factory. A lot of the business being done by Stanley was manufacturing gas engines or oil engines, or something of that sort, and I understand that he was doing in his factory a large business that was entirely independent of the

shoe machinery end. I think his principal business was the manufacture of McKay sewing machines, but I can not testify to that. As to whether his factory could have been quickly turned into a large shoe machinery factory, there are in existence to-day factories that are better fitted to turn into a large shoe machinery factory than Stanley's factory was.

676 . I did not know before a day or two preceding the Plant purchase that he had an option on the Stanley factory. I think I knew at the date of the meeting at the Puritan Club on the 20th of September that we would be required to take the Stanley Company, but I am not positive about it. I think that by some agreement between Plant and Stanley Mr. Plant was obliged to sell the Stanley property at the same time that he sold his inventions to us, if he made a sale. I didn't see the contract.

The amount that we paid Stanbon under the contract between Plant and Stanbon and the amount that we paid Stanley were in addition to the $6,000,000 that we paid Plant. I should suppose that we took over the Stanley properties almost immediately, or as soon as we had to.

At that time we were manufacturing a McKay sewing machine, used to sew McKay shoes. The Stanley Company also manufactured the original McKay sewing machine which had been developed by Gordon McKay.

It is entirely untrue that no concern in the United States was at that time manufacturing a McKay sewing machine, other than the United Company and the Stanley Company. As to whether I can name the concerns that were manufacturing McKay machines at that time, I can not remember them offhand. I am sure you will find them in the list which has already been filed. I would be very glad to look it up and give it to you. It has been filed in the case already.

Broadly speaking I was at that time and am now thoroughly familiar with the conditions of the shoe-machinery trade throughout the United States, but it would not follow that I knew those companies that were putting out McKay machines in anything like large quantities. With the development and growth of our business I don't really try to keep in touch with the manufacturers who are making other shoe machines.

I cannot say how many machines other manufacturers were making, but several thousand McKay sewing machines had

677 been sold and were in almost all factories in the United States at that time, they could be obtained by anybody who wanted them, and we were rebuilding those same machines and selling them and have continued to do so. There isn't the slightest

difficulty in going out and finding McKay sewing machines enough to equip a half a dozen of the largest factories in this country inside of ten days' time. I can't tell where you would go, I simply state the fact. To equip a factory with McKay sewing machines at that time I should probably have gone to the shoe machinery dealers in Lynn and Boston and various other places. I have no doubt that I could have got them.

Up to that time and up to the time of the filing of this petition the McKay sewing machine was sold outright, and there is not the slightest doubt that there were quantities of McKay sewing machines at that time that were owned outright by the manufacturers. I should like to state, in that connection, that we had been importuned numberless times by Mr. Stanley to purchase that business, but had always declined to do so. We didn't want it.

It is true that there were more McKay shoes being made at that time than any other class of shoes. It is not true that we did not make the McKay sewing machine until we bought the Richardson concern. We were making the McKay "Model B" sewing machine. The Richardsons were making a McKay sewing machine and we acquired that, and we continued to put that out before and since we acquired the Stanley factory.

In the exhibit to which I referred manufacturers of the McKay sewing machine are listed under the heading "McKay sewing machine." They are Walter Pearson, A. Johnson & Sons, the American Worsted Machine Company and the Nolle Works in Germany. I know there are others besides that, but I can't recall their names.

I can't tell you who Walter Pearson is. I only know the name. A. Johnson & Sons may be Johnson of France, but I am not sure.

I don't know how many machines either one of those concerns makes, neither do I know how many McKay sewing
678 machines the Stanley were manufacturing. I suppose the demand for new McKay sewing machines of the class Mr. Stanley was making was very small.

We lease model B McKay sewing machines now, and we also sell the type of machine that was made hy Stanley, and those that we built and remodeled were also leased to the manufacturer if he desired them.

Q. Now, in that purchase, Mr. Winslow, isn't it a fact that you obtained 206 Letters Patent issued by the United States, twenty-eight applications to the United States Patent Office for the issuance of patents, seventy-four patents issued by the British Government, twenty-one applications to the British Government

for patents, seventy-three patents issued by the Republic of France, fourteen applications to the Republic of France, forty-two German patents, forty-seven applications to the German Government for patents, twenty-six Austrian patents, fifty-eight applications to the Austrian Government for patents, fifty-three Australian patents, eleven New Zealand patents? Is that true?

A. Of course I don't know the number of the patents, Mr. Fowler. I never counted them up.

In addition to the Stanbon and Stanley properties we got the Bresnahan machine shop and tools in that purchase.

We had not filed any patent suits prior to June 16, 1910, when the negotiations with Plant began. Four suits were filed against Thomas G. Plant on July 28; two on August 11; two on August 13; and two on September 3. There were filed against the Thomas G. Plant Shoe Manufacturing Company three suits on July 28, one on August 11, and two on August 13. It is not proper to state that those suits were all filed while our negotiations were going on. They were all filed when the negotiations were not going on. As far as we were concerned the negotiations ceased two or three times before the purchase was consummated.

Our first interview was on June 16, the next interviews of which I have memoranda were June 23 and June 27. On June 29 I notified Mr. Endicott that so far as we were concerned we dropped all negotiations.

As to when negotiations began again, I never began negotiations. The next time I met Mr. Plant, according to my memorandum, was on September 13. In the meantime I think I had been asked over the telephone for an interview by Mr. Harry Smith, and as I remember it, Mr. Plant had tried to approach me through Mr. Herrick I had had no interview with him whatever.

During the time between June 29, when I broke off the negotiations and the date of my next interview with Mr. Plant,

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we had brought the suits I have mentioned against Mr. Plant and the Thomas G. Plant Company. During that time we had in contemplation additional suits for infringement. It was our intention to bring suits to protect our rights, and undoubtedly we should have done so.

There were rumors around the street that Plant owed large sums of money, and I heard that he owed quite a lot of money, how much I really don't know. I didn't know the parties to whom he owed as much as a million dollars. It was reported to me that he owed money at several different banks in Boston, but I didn't know the amount and don't know now. I did not at-

tempt to exert any influence upon any of those banks or any of Plant's creditors to prevent them from renewing their loans. As to whether I sent an attorney to New York City to prevent Plant from negotiating loans there, I didn't know that he owed any money in New York. I didn't send an attorney to New York to prevent his borrowing money or raising money, and any statements of that kind are absolutely malicious and always have been. I just want you to know that.

Mr. FOWLER. I was asking the question; that was all, Mr. Winslow.

The WITNESS. Yes. I know it has been stated in public print a good many times.

I can not say when Mr. Plant issued a catalog and I do not know whether the catalog represented the machines that he made or did not make. I couldn't say whether I saw a catalog before the purchase was made. I remember seeing a catalog, but whether we had it before or after the purchase I can't tell. I don't think that while the purchase was under consideration I examined the catalog to see just what machines he was putting out or if they would be of any value or service to us. I don't know now that the catalog was sent to manufacturers all over the United States and in Europe. I don't want to say that I didn't know that the catalog was sent out; I simply don't remember about that fact.

680 Q. I show you what purports to be a catalogue of the Wonder Worker Shoe Machinery Company. State whether or not you had not seen that heretofore and if you don't know, as a matter of fact, that that was a catalogue sent out by Mr. Plant to illustrate the kind of machines he was ready to put upon the market and at that time was actually offering to the trade.

A. Well, I don't understand, Mr. Fowler, that Mr. Plant ever offered these machines to the trade. I never knew of his doing it. And this catalogue, or what pretends to be a catalogue here—I have seen a catalogue which is, I suppose, substantially like this. It may have been the same thing. I don't think I ever saw one of these—what I have heard of being an edition de luxe.

I have seen a catalog which is of the same kind with the exception of the binding, but don't know when I first saw it. I think it was my understanding before the purchase that that catalog had been issued.

I don't think I can testify as to whether the machines that are in this catalog are the machines that I saw in his factory. I saw machines, I think, for doing all the operations that these

pictures here are supposed to cover. Whether the machines corresponded to the pictures, I can't say. I think he has got some machines in the catalog that he didn't have, as a matter of fact.

(The United States offered in evidence catalog of the Wonder Worker Shoe Machinery Company above referred to. It was offered and admitted to show one of the influences being brought to bear upon Mr. Winslow's mind at the time that the purchase of Plant's interests was made, and for that purpose only. Defendants objected, exceptions saved.)

(Catalog of the Wonder Worker Shoe Machinery Company is plaintiff's Exhibit 266.)

My claim is that I just simply wanted the patented improvements from Mr. Plant. I did not want the shoe manufacturing stock, but at the price it was offered I thought it was a good bargain.

681 Q. For these patent improvements and these other properties that you did not want, you paid more for them than was given to the stockholders of the Consolidated & McKay Shoe Machinery Company when it was first organized; isn't that true? There were paid originally to the stockholders of the Consolidated & McKay Lasting Machine Company as consideration for its properties stock of the United in the amount of $4,599,840; isn't that so?

A. That was the amount of stock. Then there was some cash, wasn't there?

Q. $432,000 was the amount of cash, was it not?

A. $432,000. I will assume that it was. Now, we paid Mr. Plant less than that in stock and cash.

Q. But your stock that you delivered to Plant was worth twice its face value, was it not?

A. The same stock that we gave——

Q. Yes; but there was a large surplus on hand at the time this Plant purchase was made that was not originally on hand.

A. But it does not follow that the stock was not worth more in 1899 than it was then. I mean to say we gave the same stock exactly, a million and a half of that and three million in cash, and the Consolidated stockholders got pretty nearly five million.

Q. But when that purchase was made that stock was backed up by about as much surplus as there was face value of the stock; isn't that true?

A. The figures of the annual report, Mr. Fowler, will show. I don't remember the figures.

Q. Anyway, you testify, do you not, that when you purchased from Plant you estimated your stock worth fifty dollars on the share?

A. I said Mr. Plant took it on the basis of fifty dollars a share and that it was selling in the market for fifty dollars a share.

Q. There was originally issued to the Goodyear Shoe Machinery Company or to its stockholders in exchange for its properties $4,800,000 of the capital stock of the United Company, was there not?

A. If those are the figures, I will assume that they are correct.

Q. And you also issued to the stockholders of the McKay Shoe Machinery Company five and a half million dollars?

A. Yes, sir.

Q. Now, why was it, Mr. Winslow, that you were willing to give for these patent improvements that you have mentioned and this other property that you did not want more than you gave to the original stockholders of either one of those companies?

A. In the first place, I don't agree with your conclusion that I did; but if I did, I valued the sixty per cent of the T. G. Plant Shoe Manufacturing Company at not less than three million and a half dollars. It was making and earning a very large return upon those figures. That left me issuing, as a matter of fact, $1,250,000 worth of our common stock in payment for the patents, and that price and much in excess of that price I considered it a very cheap purchase. The basis of my computation of the value of the T. G. Plant Shoe Manufacturing
682 Company was a knowledge of the earnings of that company for a long series of years, and the fact that in the year ending 1899, October—I think I am correct in stating that the earnings of that company were $700,000. Sixty per cent of those earnings would have been over $400,000. Of course it is apparent on the face that that is more than ten per cent upon the value that I placed upon the T. G. Plant Shoe Manufacturing Company; nearly twelve.

The little that I looked at the diagram that was exhibited with the original petition it did not strike me as correct, and I have been informed that it wasn't; I don't think it is, but I haven't examined it to check it up.

It is substantially true that the increase in the number of turn and welt shoes made in the United States, shown by the exhibit that I have filed, is substantially all in the production of our machines. Of course, we are unable to know many times the manufacture of shoes that are done upon other people's machines where any one of our principal machines is used. We have some line upon that manufacture, but I assume that there are a great many shoes that we don't know of that they are making. I

don't know and should not like to give a judgment as to what per cent of the welt shoes made by machinery in this country are made on our machines. As to whether fully ninety per cent are made on our machines, I have stated I shouldn't like to give a judgment, and I don't know. With reference to turn shoes, I should have to make you exactly the same answer. I don't know and I should hesitate to give a complete guess.

Referring to the statement which I have filed with reference to the cost of experimenting in our factory, I do not know how much experimenting has been made in the United States outside of our factory. Of course, I have no means of testifying as to the expense of that experimenting outside of our factory, but from my personal knowledge in a broad way and from the issuing of patents relating to the shoe art I should say there is a lot of money spent outside of our factory in inventing shoe machinery.

We have employed quite a number of experts to make these experiments, but it is not a part of our plan at all, when we hear of an expert in the shoe-machinery business, to endeavor to employ him.

683 The increase in the number of lasting machines from 1900 to 1911, stated on the list which I have filed, consists entirely of our own machines; it was so stated. I haven't attempted to give a list of lasting machines of other people. As to whether I know that there were any others up to 1911, Mr. Krentler tried to sell me the Krentler-Pym lasting machine two or three years ago. I am informed that that machine is out in the factories. I don't know how many, but I don't think a great many. As to whether the output of the Krentler-Pym machine up to 1911 was two machines which were put in the factory at St. Louis that was burned up, I think that is not correct. I think there are other Krentler-Pym machines out at work in other factories. I think the testimony referred to related to that particular factory.

There are also lasting machines in use in R. H. Long's factory. All his shoes are lasted by machinery. My remembrance is that the Boylston Manufacturing Company make a lasting machine. I don't think anybody has as good a lasting machine as we have.

I think all of these lasting machines were made before December, 1911, but I can't testify as to the number that were out.

As to whether in our trade with Plant we obligated him to turn over all inventions that he might thereafter become interested in within fifteen years, if that is a fact the papers filed in this case will show it and I can't state.

Q. And if you were simply wanting the improvements that were then existing on the machines, why did you obligate him to do that?

A. Well, you know, according to the patent laws, as I understand them, a man can apply for a patent five years from now on an invention that he has made last year, if he hasn't made it public in that time, and you wouldn't buy a man's patent and then leave him free to make an application later for something that he already had in his mind, that he ought to have transferred to you, which he didn't.

The changes in the styles of shoes originate in the minds of designers of shoes and the designers of lasts employed by shoe manufacturers or by last manufacturers; sometimes they are pattern makers whose business is getting out patterns
684 for manufacturers. The United Company has nothing whatever to do with them.

I can't tell you how many patents relating to shoe machinery are owned by the United Company. We are constantly taking out patents to cover the inventions that we develop. I have testified that we have not suppressed any invention. I might go further and state that we try to embody in our machines every invention we can develop that will improve the art of making shoes either in quality or in the reduction of the cost.

As to the Gem insole machine, after we purchased that machine we credited back to the manufacturers the amount of the royalty, on both the machines which were out at the time of the purchase and the machines which we put out subsequently, where the product of those machines was used in shoes that were made by our machines.

I know of no other company which was putting out a machine for the same purpose at that time. There has been such a company as the Sleeper Insole Company, but they never put out such a machine; they did not have any machine for doing that work. Their inner sole was made in an entirely different way.

685 Q. Why was it you offered that favor—I will not call it a rebate—to the manufacturers?

A. So as to reduce the cost to the manufacturer of the Goodyear welt shoe, as we have all of these things that you have treated in that way. The reason we took off the initial payment and put it out on rental was because we were hoping to increase the total manufacture of those shoes and thereby benefit the public.

Q. 2504. Of course, if you increased the number that were manufactured you would help yourself?

A. Certainly. We were not doing it as a purely philanthropic proposition.

As to the list of concerns, which I have filed, which were advertising as dealers in some form of shoe machinery in 1900, a great many of them are in business now, I think. The Wheeler & Wilson Company for instance; that was purchased by the Singer Manufacturing Company. The Wheeler & Wilson Company was making machines that were in the room where more machinery was used than in any other room by a great deal, and the machines were very important in the manufacture of shoes; it is true that they related wholly to the upper. Those machines had nothing to do with attaching the soles, but they were shoe machinery.

As to other concerns on that list which are now in existence, the Boylston Company has the Union edge setter and the Flagg Manufacturing Company and the Globe Buffer Company; so I assume that those businesses are going on. There has been evidence about that. I think J. G. Buzzell is in business now, making buffing machines, heel scouring machines, and various general department machines in that class. He was in business away back in 1880. Those are machines which we are making in our general department and were selling outright at the time this bill was brought. The Haverhill Shoe Machinery Company is another one. The business of Fox and Webster has been brought into the Haverhill Company.

686 Q. Mr. Winslow, isn't it a fact that a great many on this list—for illustration, Arnold, were, you say, manufacturing lasts; Behrens, who manufactures lasts; and Belcher, who manufactures lasts—quite a lot of names mentioned in this list here, who were not manufacturing any machinery, or anything that has any relation to this case?

A. Well, if you can tell me what does relate to this case, Mr. Fowler, in view of your accusing us of having bought a whole lot of companies for the sake of getting a monopoly, and I can know what this case is, I might answer your question definitely.

Q. 2523. You don't call lasts shoe machinery, do you?

A. Just as much as a lot of the things that you have in your bill as our having bought for the purpose of getting a monopoly.

Q. 2524. Then you have wax here.

A. That is just as much shoe machinery as sandpaper, isn't it?

687 On referring to the list, the important concerns which are now doing business outside of those which I have already mentioned, are first the Carborundum Company, a very large

concern making abrasives that are used to buff shoes. The Atlas Tack Company is the largest manufacturer of tacks in the world; those are tacks used during lasting. Baeder Adamson is one of the largest manufacturers of abrasives, sandpaper, and emery cloth, etc., used in shoe factories. J. G. Buzzell, whom I have named, is one of the manufacturers of shoe machinery. He makes machines which we have called general department machines which are used in the bottoming room, such as buffing machines. J. G. Buzzell is dead, but the business is going on just the same. He was alive in 1899 and for quite a number of years afterwards.

I have stated that the Flagg Manufacturing Company and the Globe Buffer Company went into the Boylston Company. The Globe Company made buffing machines, scouring machines, and edge setters, I think, the same sort of machines that we got from Ross-Moyer. There is Hauthaway & Sons, cement. George Knight & Company, Brockton, make a varied line of eyeletting machines and perforating machines. The Lockett Crimping Machine Company make a crimping machine and a machine for molding uppers, used in a great many factories. We market their machines for them sometimes, but we don't do their work.

There is the Merrick sewing machine. I think Mr. Merrick testified he has sold a great many hundreds of machines. The Morley Button Sewing Machine Company, which was absorbed by the Singer Manufacturing Company, made a royalty machine for fastening buttons to shoes. They wanted us to buy them, but we didn't. There is the Peerless Machine Company and the Peerless Lasting Company, which I suppose went into the Peerless Machine Company. It was in existence at that time. They made several kinds of machines, including eyeletting machines.

I don't know whether they make the Peerless lasters now.

688 The Puritan Manufacturing Company manufacture machines similar to Merrick's, that were used in the fair-stitching of McKay sewed shoes; and the Sewing Machine Supplies Company makes any number of machines; I don't know their exact names. The Puritan Company is entirely different from the Union Lockstitch Company. Merrick used to work for that company and left their employ at the time he came and wanted me to buy him out. I suppose the present name of the company is Puritan Sewing Machine Company. The people who run it are the Sewing Machine Supplies Company. Those people are the big needle manufacturers of the company. I think the name is Torrington Manufacturing Company; they made eyelets also, I think. We are sole agents for the needles which they

make for McKay sewing machines and Goodyear welting and outsole stitching machines. We have nothing to do with them other than that. That name is not on the list; there are quite a lot that are not on the list that occur to me as I look at it. This list was prepared from advertisements in the trade papers.

The Reece Buttonhole Machine Company manufactures, or did manufacture up to within a year, all the buttonhole sewing machines and all the buttonhole finishing machines that are used in shoe factories in the country, I think, without exception.

Stewart Brothers make shoe machinery and counter making machinery. The Tripp Giant Leveler Company and the Union edge setter are in the Boylston Company now.

W. J. Young, at Lynn, makes quite a lot of shoe machinery, including heel compressing machines, heel making machinery, welting, special sewing machine, and a large line of machines ued for special purposes in shoe factories. A heel compressing machine prepares the heel for application to the shoe. It is one of our auxiliary machines. I don't know to what extent Young has been able to introduce his heel compressor among manufacturers. I think we are in constant competition with him all the time in this country. We purchased his
689 European patents way back, but we did not buy his American rights.

As to the statement of ideas and inventions which were offered to the company and not taken by it, I should hope I could not mention a single one of those which has been developed into a machine of any value, but I have not looked through it to see. It is our constant desire to improve our machines, and if we believed a thing to be good and to the advantage of the manufacturers we should have endeavored to have obtained it. I have no doubt that some of those were developed.

As to whether we ever rejected a single idea or invention which we regarded as valuable, the inventor's ideas might be entirely different from ours as to the value of the invention, and that might lead to our not taking it. We were not trying to buy inventions for the sake of preventing other people from inventing machines, but if we could buy an invention which would improve our machine or aid us to develop a new machine to help the art of making shoes, of course we would buy it and embody it in our machines, if we could buy it at a reasonable price. As to whether we had already embodied many of them in our own machines at the time they were offered to us, I don't think so. Of course it does not make any difference to us whether we spend our money in our own factory for something that will improve the machines or whether someone brings it to us.

I could not tell whether every one of the 746 new concerns who have entered the shoe manufacturing business since 1900, named on the list which I filed, is a lessee of the United Company. I had that list compiled by our office force, and whether those manufacturers are just those that we had business with or whether there were any more that we didn't have business
690 with, I can not tell, but I will look that up. I never tried to ascertain, and must decline to guess, how many manufacturers in the United States are not our lessees.

Referring to the list which purported to be a partial list of concerns which have been offered to the United Shoe Machinery Company, which I filed, that was not intended to be a complete list. I think I could probably recall others, and that I did when I went over the list. I should have to make a study of that list before I could state which of those concerns were in existence on December 12, 1911, which were doing any substantial business in competition with the United Company.

It is true that the list which I filed, showing machine operations performed in the manufacture of all kinds of shoes and also operations performed in typical factories, includes operations relating to work upon the upper of the shoe as well as upon the soles and attaching the soles to the uppers.

(Examination of Mr. Winslow suspended by agreement of counsel.)

691 DECEMBER 12, 1913.

HENRY B. ENDICOTT, witness for defendants:

I reside in Dedham, and I am a shoe manufacturer and tanner. The name of my concern is Endicott, Johnson & Company, and the business is located at Endicott, New York, with offices in Boston and New York City. We have more than one factory, and make about 40,000 pairs a day. I have been in that line of business twenty or twenty-five years, but in leather and shoes both I have been in business forty years. I was at one time the largest owner of the Commonwealth Shoe and Leather Company, Mr. Charles H. Jones's company.

I knew Thomas G. Plant in 1910 and prior to that time. Prior to June, 1910, I was not a director of the United Company, nor interested in it in any way. Prior to June, 1910, Mr. Thomas G. Plant made a proposition to me with reference to the placing of machinery in our factory.

He wanted a list of our machinery, and stated that his plan was to fit up three factories—the Thomas G. Plant factory, Commonwealth Shoe & Leather Company factory, and Endicott, Johnson Company's factories—with his machinery, and then sell out to the United Company.

He had previously asked me to become interested with him in his shoe machinery venture. That was in 1909. He asked me if I would consider going into the machinery—investing in the manufacture of shoe machinery, stating that it would be an investment of seven or eight hundred thousand dollars, would require some nerve, but would be a pretty quick turn-over.

He did not at that time state to me anything more definite as to what his plans were, and he did not then describe what he meant by his quick turn-over. That was later when he spoke of the United Company, as I have just testified.

I gave serious consideration to Mr. Plant's proposition to equip our factory with his machinery, and I made an
692 investigation of his inventions myself and had them examined by my experts.

As a result of my own examination and the reports of my experts the conclusion which I came to, as a practical shoe manufacturer, in regard to the equipment of my factory with Plant's inventions, was not to put in his machines. The reason for that conclusion was that, from the reports of my experts, my own judgment was that the machines were not strong enough or practical to do our work. Our work was men's shoes, both welts and heavy shoes, nailed and McKays—all kinds of men's shoes.

I came to this conclusion within, I should say, ten days after the examination. That examination was probably in May of 1910. I advised Mr. Plant of my decision.

I think his proposition to equip our factory and the Commonwealth factory and the T. G. Plant factory was made to me in the presence of my partner and my expert, I think, and in the presence of Mr. Charles H. Jones and Mr. Clarence D. Reed. Mr. Reed is Mr. Jones's associate and is the practical man in the Commonwealth Shoe Company.

At the time I declined to put in his machinery Mr. Plant had a conference with me. He stated to me, as I testified, that he wanted to fit us up, use us as a club to sell out to the Machinery people. I told him at that meeting that I did not think he needed that—that I thought he could sell out to them if he had good value. And he said he didn't think so. I didn't agree with him. I told him I thought he could. He asked me if I would be willing to help him, and told me he would give me $250,000 if I would complete the sale, or help to complete it. He wanted to sell his proposition, as he put it, consisting of his machinery or his patents on his machinery. At that time there was no talk of selling his stock in the T. G. Plant Company.

693 In consequence I got into communication with Mr. Winslow and arranged for a meeting. That took place at my house. After some sparring and little bitter talk on Mr. Plant's part, accusing Mr. Winslow of meeting him in an electric car and not recognizing him, we got down to business and after a while Mr. Winslow inquired the price, etc., and $6,000,000 was mentioned. That price was to hold good until the next Saturday night and then it was to advance $500,000, Plant giving the reason that he had some arrangement pending with financial men that depended upon a prompt decision. Mr. Winslow answered that Mr. Plant could make it as easy or as difficult for him to trade as he saw fit, but that he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking.

That meeting was adjourned and we met within a few days at the Parker House. The subject then discussed was how Mr. Winslow could arrive at a conclusion as to the value. At that meeting Mr. Plant showed him a number of advertisements which he proposed to publish. Mr. Winslow said the only way he could satisfy himself was to have his experts examine what Plant had. Up to that time Mr. Winslow had not made any proposition or any offer to Mr. Plant. As to Mr. Winslow's stipulation that he must have an examination, Mr. Plant asked him at that meeting who he wanted to examine and Mr. Winslow mentioned some names of experts. Mr. Plant thought that one of them at least would be satisfactory to him and he was going to find out whether the others would be. I think that is the substance of that meeting.

The next meeting was at the Touraine, I think. Mr. Plant then said that his lawyers advised him against having the experts examine the machinery. I think he stated that there were likely to be infringement suits and that they would simply get the knowledge and perhaps turn him down.

694 Mr. Plant suggested that if the United Company would put up a million dollars or sign a paper, their experts might go ahead and examine the machines. I think the paper was submitted by Plant's lawyer to the United lawyer. It proved to be an impossible paper to sign, and therefore the only question was about putting up the million dollars.

A meeting was then held at Mr. Whipple's office. He was at that time counsel for Plant. Mr. Winslow, Mr. Fish, and I were present. At that meeting Mr. Winslow refused to sign the paper, if he hadn't before, and said it was impossible to put up a million dollars to buy a pig in a bag, or some such remark as that, meaning without knowing anything about the value.

I called Mr. Plant out and suggested to him that he allow Mr. Winslow to examine the machines. He refused to do it. I then suggested that as two of the United Company directors, George E. Keith and John Hanan, were good sized shoe manufacturers he allow them to examine the machines. Plant thought that might be arranged, and finally agreed that they should examine the machines and report whether in their judgment it was advisable for the United Company to put up the million dollars and go on with the investigation.

Within a day or two after that meeting I was at the Touraine Hotel and was called up by Mr. Winslow early in the evening. He said that he had called me up to say that Hanan and Keith had refused to take the responsibility of the examination and the recommendation, and therefore, since Plant would not allow him to put his experts on, the deal was off so far as he could see. I attempted to get Mr. Plant on the telephone right away, but I was not able to get hold of him, so I didn't report to him that night that the deal was off.

695 I felt disappointed at not having made a success of my attempt, and went down to Mr. Winslow's office the next morning, not having communicated with Plant. My words to Mr. Winslow were about like this: "I am going to make a proposition to you, Mr. Winslow, and you may laugh at it, but you shall be the only man that will laugh at it, because you must promise me if you don't accept it never to reveal it," which of course he did promise. I said: "Hanan and Keith refuse to take the responsibility of this recommendation. I have been thinking that if I had been a director in your company I would have been willing to take that responsibility; if you care to elect me as a director in your company, I will do my share toward taking that responsibility." Mr. Winslow said he wouldn't laugh at that, that he liked the idea of it; and he asked me if I would go and see Mr. Howe, which we did—took a motor and went to Mr. Howe's residence, I think to Marblehead.

Q. Mr. Winslow spoke of you as the largest shoe manufacturer in the world. Without being too modest, is that a correct statement, Mr. Endicott?

A. I am not quite certain, Mr. Choate. I have never worried myself much about that.

Q. Well, your output is 40,000, and growing?

A. Oh, yes. Inside of six months it will be 57,000 a day.

Mr. Howe and Mr. Winslow conferred, and Mr. Howe evidently agreed with Mr. Winslow that it would be a good plan to accept my proposition. Mr. Winslow asked me to go to New York that

night and meet some of the directors or large stockholders, Colonel Barbour, I think, and Mr. Woodward.

We returned from Marblehead in the afternoon, and I got into communication with Mr. Plant and met him that night and told him that I expected to go on the board of directors of the United Company, and that accordingly any contract or agreement between us was absolutely void; that is, that I couldn't be in a position of accepting pay from him to put through a deal when I was a director of the United Company. He said he understood my position exactly.

I then went to New York with Mr. Winslow on the midnight train and met Colonel Barbour and Mr. Woodward, and was elected a director. I then sent for my experts, and with Hanan and Keith we examined the machines at the Thomas G. Plant factory. We reported that night at the Algonquin Club to some of the United Company people. Messrs. Winslow, Howe, Herrick, Fish, Connor, and Hurd were present and Mr. Hanan,
696 Mr. Keith, and my two experts. Mr. Hanan and Mr. Keith reported against putting up a million dollars, and I was the only one that favored it. I stated that I felt that Plant had a good many things that, combined with the United Company machinery, would help the United Company and help the shoe business. I have in mind only in a general way the things of which I spoke. There were improvements that my experts reported on very favorably. I remember some device on the Goodyear machines which was automatic and cut off and saved quite a little stock as well as labor.

My report favoring the putting up of a million dollars received no response whatever from Mr. Winslow or his associates. They simply decided not to do it. I think Mr. Winslow didn't talk a great deal, except simply saying at the end: "Well, then, this is decided, that we don't go any further with it."

I did not make any report of that to Mr. Plant. The arrangement made at the meeting, as I remember, was that the United lawyers, Mr. Fish and Mr. Herrick or Mr. Howe, communicate the result to Mr. Whipple. That was on July 5, 1910.

Mr. Plant telephoned me within a day or two and said he would like to see me. I met him at Whipple's office. He seemed quite excited and said: "Mr. Endicott, you are on the wrong ship. You are on the 'Merrimac' when you ought to be on the 'Monitor.'" I stated that he had a right to that opinion. He said: "I will make their stock look like thirty cents inside of four or five weeks." I said that was his privilege, but that I had been elected a director of the United Company and was not

interested in any other change, which I suppose was what he meant.

I did not see him again until early in September, and I saw him then on the train coming from Dedham to Boston. He came and sat beside me and naturally we talked about this matter. Plant said that the United Company never meant to buy him out; never were in earnest. I told him I was sure that they were. I said: "Mr. Winslow took the position that he would buy out if you had the value, and I think he would
697 take the same position to-day." He said he didn't believe it, and I told him that I felt quite sure of it. He said: "If you think so, I will make one more throw of the dice, if you are willing to arrange for a meeting between Mr. Winslow and myself." I told him I was, and I arranged for a meeting. Right after that, before the meeting took place, Plant rode out to my house. At that time he told me his price was $6,500,000 for his machinery proposition, but that he would give me all over $6,000,000 that he got for it. I told him I was in the same position, of course, that I was when I threw up the $250,000.

We then had the meeting at the Touraine Hotel in September, 1910, according to my memorandum on September 13. The same question came up in regard to the examination of the machines. Plant was then a little more pliable in regard to having experts examine them, but he seemed to be quite fearful that the experts would be of great assistance in the patent suits that were being brought and that were likely to be brought. Mr. Herrick was finally called into that meeting, and the result of the meeting was that Plant did agree that the experts should examine, and I think that Mr. Winslow should be allowed to examine also.

At no time during these negotiations did Plant say anything to me about selling his stock in his shoe company. He didn't discuss that with me at any time.

After the experts had examined, Plant and Winslow and myself had a meeting at the Algonquin Club. That I have down September 16, 1910, and at that time Mr. Plant stated that he would like to get out of business, and that he would like to include his holdings in his shoe company as well as the machinery proposition. The reasons which he gave for that were that he didn't care to be a slave all his life, and wanted to enjoy life, and so forth; he had worked overtime; something to that effect. Mr. Winslow told him that the United Company had uniformly refused to go into the shoe business, but he had no objection, if it was a bargain, to include that, if it made it easier for Plant and easier for himself.

Plant submitted figures of the earnings of his shoe company, which I think showed four or five hundred thousand
698 dollars a year. My impression is that the largest year was seven or eight hundred thousand dollars, and the smallest four. These were net earnings of the company. Mr. Winslow asked him his price and as I remember it was $8,500,000, including his interest in the shoe company and his entire interest in the patents and machinery and whatever he wanted to sell. Mr. Winslow told him that was out of the question, and Mr. Plant said that that was all there was to it. So that meeting was ended, Mr. Winslow stating to him that if he had anything to take up with him at any time he would be glad to see him.

I went to the Touraine Hotel and Mr. Plant called me on the telephone the next morning, and came to the hotel to see me. He said he wished that I would find out what Mr. Winslow would give for the entire proposition. I told him I was quite sure Mr. Winslow wouldn't make him any offer, but if he had anything to say I would report it. He asked what I thought Mr. Winslow would give, and I told him that I purposely had not tried to find out what Mr. Winslow would give, and didn't know whether Mr. Winslow knew himself. I told him that while he asked $8,500,000 I thought he would take $7,000,000, and although I didn't know, I thought that Mr. Winslow would be willing to give $4,000,000, possibly $5,000,000; so that if my ideas were right there was $2,000,000 difference between them, and that sometimes when I bought leather I divided the difference. I said that possibly this might be done, but that this was simply a suggestion and that I had no authority or knowledge. He asked me to see whether Mr. Winslow was willing to see him again.

I reported that conversation and Mr. Winslow said he was willing to see Mr. Plant. I suggested that we vary the monotony and that he have Mr. Herrick at that meeting instead of me. I called up Plant and told him Mr. Winslow and Mr. Herrick would meet him at the Puritan Club. Mr. Plant said that if Mr. Winslow were going to have an attorney he would have his attorney, Mr. Carr, I think. I think that meeting was on September 20.

699 The next morning, the 21st, Plant called me up and told me the deal had been practically consummated. He told me he was going out of town that day with the St. Louis manufacturers to show the machinery, etc.

When I came in town, I went to Mr. Winslow's office and they told me the same thing—that the deal had been virtually con-

summated. I think they then and there made out a check, which was for $500,000, as I remember it, and Mr. Herrick or I—I think it was Mr. Herrick—took it down to Mr. Carr. I called up Mr. Plant and told him the check was made out, and he asked to have it delivered to Mr. Carr. That ends the story up to the final signing of the papers.

In the spring, and before I became a director of the United Company, I advised Mr. Winslow to buy Mr. Plant's patents and inventions, because I thought there were combinations there which, with his own machinery, would be of assistance to the United Company and the trade. I said that to him, and I told him my experts believed in that too. His reply was that he didn't know anything about whether he could purchase it or not and would only purchase it if it was of value—if it was a good, fair offer at the price and was of value to the shoe trade and to the United Company.

Before I became a director I argued with Mr. Winslow that it would be a benefit to the shoe trade to have those different features combined in one set of machines. I thought it would make the United Company's position stronger and would help their business.

I know George Learned, of Newburyport, and I have known him some time. At one time I accompanied him when he went to see Mr. Winslow at his office. I think it was in the fall of 1910. I don't remember the date. Before that I had asked Learned to call upon me. My nephew had told me of certain statements that Learned was reported to be making, and that was the occasion of my asking him to come and see me.

700 When he came I had a talk with him, and as a result he and I went to see Mr. Winslow. At that talk with Mr. Winslow at first only Mr. Learned, Mr. Winslow, and myself were present. During the conversation Mr. Edwin P. Brown, the general manager of the United Company, came in.

As I remember the conversation, Mr. Winslow told him he understood he had made statements that Mr. Winslow had threatened to put him out of business and asked him if that was true, and Mr. Learned said it was. Mr. Winslow told him that he was stating something that was not true. Mr. Learned said that he so understood it. Mr. Winslow said that it was entirely untrue, and that Mr. Brown was present at the meeting when Mr. Learned claimed this took place. I asked that Mr. Brown might be called into the office. He came in, and I asked him if Mr. Winslow made any statement that could be construed into meaning that he would put Mr. Learned out of business. Mr. Brown said emphatically, no. Mr. Learned said that he was

very much excited at the time and that he must have been mistaken. Mr. Winslow suggested that if he was willing to say he was mistaken he ought to see the people that he had made the statements to and tell them that he was mistaken. Mr. Learned agreed to do that. I suggested that he ought to write Mr. Winslow a letter stating that he had been mistaken. I think he did write him a letter—I am not quite clear about that. That is the whole of that incident so far as I have any knowledge of it.

I am not particularly familiar personally with shoe machinery or with the details of the making of a shoe. I do not handle that end of our business.

Cross-examination:

Our factories are located at Endicott, New York, and at Lestershire, New York. The largest factory is at Lestershire and the largest tannery at Endicott. Probably the welt shoes made in our plants are a larger proportion than the McKay shoes.

701 I was at the Exchange Club when Mr. Plant made the first proposition to me to take his machinery. He said that he would like to show me the machinery and would like to fit up both of my factories with his machines. That was in the fall of 1909—probably in October, 1909. I told Mr. Plant that I would look at his machinery when he was ready to show it, and I left him at that meeting with that understanding. I next heard from Mr. Plant in 1910, probably about May. I had in the meantime not gone to examine his machinery. Mr. Plant then came to my office here in Boston and said he was ready to show me his machinery. I told him I was ready to look at it, and I did look at it. I went to the factory with my two experts, Mr. Johnson, my partner, and Mr. Tobin, one of our superintendents, and we examined the machinery. We spent a day in the factory. Mr. Plant's machines were in operation at that time, but not all the machines that he wanted me to take were in operation. I saw his machines making his women's shoes in operation. There were some other machines that he had pictures of, I think.

I saw in operation the welting machine, the outsole stitching machine, the lasting machines, the heeling machines, the metallic fastening machines, and all the machines he had there to show. My experts did not make a written report to me.

It was ten days or a fortnight after this that I concluded not to put in Mr. Plant's machines. They were doing satisfactory work when I saw them, and I had no objection to make to the work that the machines were doing.

Before I declined to put in Mr. Plant's machines I had another conversation with Mr. Plant. He asked me if I would give him

an opinion in regard to his machines, and I did give him a good opinion—that he had a first-class set of machinery, doing good work, etc. He did not ask for the opinion of my experts. I was the only one that I know of that gave him an opinion as to the satisfactory operation of the machines.

702 Q. Now, then, why did you decline to put in Mr. Plant's machines?

A. From the report my experts gave me, I felt they were not practical for our business.

Q. Why not?

A. They were not heavy enough. They didn't believe they would stand up with the day's work, day in and day out.

Q. How about the women's work?

A. I don't know anything about women's work. I don't make any women's shoes.

Q. Well, what caused you to come to the conclusion that they would not stand up under the work, in view of the fact that you had made this report to Mr. Plant that the machines were satisfactory and doing satisfactory work?

A. They were doing satisfactory work in Mr. Plant's factory.

Q. If they would do satisfactory work in Mr. Plant's factory, why they shouldn't do satisfactory work in your factory?

A. From the report of my experts, they were not heavy enough to do our work—were not able to stand up and do our work every day.

Q. Was that the report you made to Mr. Plant?

A. Yes.

The welt sewing and outsole stitching machines in our factory at that time were undoubtedly the United Company's exclusively. I don't know whose heeling machines we had, although they were undoubtedly the United Company's. I don't know about the metallic fastening machines. I know we pay the United royalty, though I don't know what it is for. I don't have anything to do with that part of it. We don't pay anybody else a royalty that I know of, but I don't know that either. That is all attended to from Endicott, New York, and that work is handled by Mr. Eliot Spaulding.

I made this report to Mr. Plant verbally at my office. He replied that he wanted to fit up our factory with his machinery. He made no proposition except that he would do it, and he figured that it would cost us two or three hundred thousand dollars. No definite sum was ever mentioned. We were to buy the machinery outright.

703 That was not all Mr. Plant said at that meeting—that he would like to fit up our factory. He said he would like to fit up our factory to help him to sell out to the United Shoe Machinery Company.

I replied that I thought he could sell out to them without that. I thought there was a value there and I thought they would be willing to buy anything that would help their business, same as anybody else. Seeing the machines and my experts' report made me think there was value there. I thought all the machines showed some value. I couldn't name any special machines, except that I remember my experts spoke especially of some devices on the welting machines. I don't think that was the only thing reported to me by my experts; I think there were a great many others, but I don't know what they were.

Between the time when I saw Mr. Plant in the fall of 1909 and June, 1910, I did not have any conversation with any representative of the United Company with regard to that matter. After I examined Mr. Plant's machines and before I concluded that I would not install them in my factory, I did not have any conversation or any communication with any representative of the United Company. My reason for thinking that the United Company would buy Plant's machines was on the general principle that anybody would buy a thing that would help their business. My knowledge that it would help the business of the United Company was based on the report of my experts that there were a good many things in Plant's machinery which, combined with the United machinery, would make their machinery more valuable to themselves and to the shoe trade.

By the statement on my direct examination that I thought it would make the United Company stronger, I meant the same as any concern would be stronger by having better machinery,

704 better shoes, better leather, better dry goods, better merchandise, or any kind of better stuff to sell or make.

I suggested to Mr. Plant that I thought the United would buy his machinery without driving them to the point of buying it. When Mr. Plant said that he wanted to put his machinery in our factories to compel a sale to the United Company, I suppose he hoped to make a success in our factories, and that, as we were fairly large manufacturers, the United Company would be afraid that he would put them into all the factories. As to whether it would bring him into competition with the United Company, I suppose that is what he had in his mind.

When I told him I thought the United Company would buy him out without his installing machines or driving them to the

point of buying him out, I think he doubted it at first, but after that he asked me if I was willing to help him make the sale. I saw Mr. Winslow, I think within a few days after I had concluded not to take the Plant machines. I happened to meet Mr. Winslow at the South Station. I shook hands with him. He spoke about the weather, and so forth, and said: "What are our friends doing?" I said: "What do you mean?" He said: "Our friends in the machinery business." I said: "Who are your friends?" He said: "That is what I would like to find out." I said: "Why don't you?" He said: "I am going to New York and I have got to hurry." I said: "All right; I will see you when you come back. You can call me up if you want to see me, or I will call you up."

Mr. Plant's name was not mentioned at that time and nothing said about him. Mr. Winslow did not know what I would see him about when he returned. I think he referred to the St. Louis manufacturers. I knew they were in session. I couldn't think of anything else.

I called Mr. Winslow up within two or three days and went to his office. We talked about his fishing trips in Florida, and so forth, and then he got on to the subject of machinery. He asked me if I had seen the Plant machinery, and I told him I
705 had. He asked me what I thought of it and I told him I thought well of it. I asked him why he had not posted himself about it and why he hadn't bought it. He stated he had no opportunity to buy it, didn't know the value of it, and had no means of trying to buy it. I told him that I should think he would look into it, and he said that he would be very glad to. I stated that I would be very glad, if he was willing, to arrange for him to meet Mr. Plant. He said he was willing to meet Mr. Plant, and I arranged it.

Previous to that time Mr. Plant had offered me $250,000 if I made a sale; he did that when I turned down his machinery.

After this conversation with Mr. Winslow there was a meeting at my house, arranged by me, and Mr. Plant, Mr. Winslow, and I were there. Mr. Plant made the proposition to sell out for $6,000,000, and that price was to hold good until the following Saturday night, then it was to be $6,500,000. That was for the proposition in the shoe machinery line, including everything that he had, patents and machinery and everything else. I so understood it. Nothing was said at that meeting about the shoe-manufacturing business.

There was another meeting at the Parker House. Mr. Winslow and Mr. Plant and I were there. The talk then was altogether about an examination of the stuff to find out the value. There

was no change in the price at that time. I think there was no talk about price. I think nothing was said at that meeting about putting up a million dollars for an examination of the machinery.

I arranged for both these meetings. The next one was at the Touraine, and the same question of the experts' examination came up there. Nothing was consummated at that meeting except the proposition from Plant that the United put up a million dollars or sign a paper. I think that was at that meeting. Mr. Winslow declined to do that.

As to whether I was disappointed after that meeting, I think not. It was after the deal was declared off absolutely by
706 Mr. Winslow that I became disappointed. That was June 29, or about then.

In the meantime I had discussed the matter of having Mr. Hanan and Mr. Keith examine the machines and they had declined to assume that responsibility. Then I went to see Mr. Winslow and made a proposition to him that if he would elect me director in his company I would take the responsibility of going with Hanan and Keith and advising the company whether to put up the million dollars or not.

Q. Now, I want to get that clearly. What did you say when you went in to see Mr. Winslow about being elected a director?

A. I said: "Mr. Winslow, I am going to make a proposition to you and you may laugh at it, but you are the only man that shall laugh at me, because you must promise me, before I make it to you, that you shall never divulge it in case you don't accept it."

Q. Why not?

A. I am not in the habit of offering myself as a director.

Q. Why did you offer yourself as a director in this case?

A. Because I wanted to make a success of what I had started in on.

Q. In other words, you wanted to be elected a director of the United Shoe Machinery Company to carry through this deal to acquire the Plant machinery; is that right?

A. As far as I was concerned; yes, sir; and because I believed, of course, as I have stated here, that there was value there.

Mr. Winslow, of course, promised that he would keep anything confidential that I asked him. Then I said: "Then you may elect me as director of your company, and I will with Mr. Keith and Mr. Hanan take the responsibility of advising this company whether to put the million dollars up or not."

Up to that time I had not owned any stock in the United Company. I did not acquire any before I was elected, but after I was elected I acquired, I think, thirty or forty thousand

dollars' worth at the market price. I think the market price was 50 odd. I think I had to have some stock to be elected, and before I was elected I might have had one share; something to go through the form. I think I bought the stock as soon as I got around to it, in a few days. I bought the stock in
707 the market. Lee, Higginson & Company bought it for me. I don't know whether I went to their office and got the stock. I may have sent a boy up or telephoned for it, as I would buy any stock.

I had absolutely no conversation with Mr. Winslow or any representative of the United Company about getting this stock before I bought it, none whatever. No one said anything about my having stock before I could be elected a director; they didn't have to. As to how I knew I could get the stock, I had a reasonable right to think I could get it. It is sold every day on the market. I had not inquired to ascertain whether or not it could be had. I sent an order down to buy it, probably within ten days after I was elected a director. I have that stock now and have not acquired any more since.

I paid for that stock in cash. I would like to have you ask me all the questions about that you like. That was an absolutely straight transaction as could possibly be.

The reason why I was willing to give up Plant's proposition to pay me $250,000 for the sale of the Plant machinery, and put it through without getting anything, was that there was absolutely no chance of putting it through the other way, because Mr. Winslow turned the deal down. As to whether I could have induced him to change his mind without becoming a director of the United Company, I couldn't have been in a position to advise it in conjunction with Keith and Hanan without being a director. As to whether Mr. Winslow had confidence in me, he might have had some confidence at that time. I think his confidence in my trading ability has been shocked somewhat since.

I had not made an examination of the Plant factory in conjunction with Mr. Hanan and Mr. Keith before I made that suggestion that I be elected a director to Mr. Winslow. As to whether I knew whether Mr. Winslow would take the recommendation unless I was elected a director, I didn't know that he would take it if I was elected, and he didn't. That was the only way to try to put the deal through. I firmly believed it was of value, and I believe so today.

708 Q. No; but you stated a moment ago that you didn't know even after you were elected a director whether you could put it through. What I am trying to get at is, how your influence was so much greater with Mr. Winslow or the repre-

sentatives of the United Shoe Machinery Company after you became a director in the company than when you were on the outside as a shoe manufacturer.

A. I think it would be pretty good proof to Mr. Winslow or anybody else that I believed in what I was recommending if I was willing to become a director.

I should think it was in the early part of July that I became a director of the United Company. I have it down here that I again took up the matter with Mr. Plant, the matter of examining the property, on July 5. I got the data from which I am refreshing my recollection from memoranda that I made at the time and afterwards from my recollection.

After I became a director Mr. Hanan and Mr. Keith were perfectly willing to assume the responsibility and examine the property with me, and we went out to Plant's factory. As to whether before I became a director I had discussed with Mr. Hanan and Mr. Keith whether or not after I became a director they would be willing to assume the responsibility in conjunction with me, absolutely no. I hadn't mentioned it to them at all.

I had a meeting with Winslow and Plant in September, 1910, my memorandum says about the 13th of September. As to whether I had heard at that time that certain shoe manufacturers from the West were coming here to examine Plant's machines, I think I knew of it earlier, about the time I examined the machines. I had heard the western shoe manufacturers discuss the matter once at the Touraine Hotel, in June, 1910. I met there with them. I did not know then they were coming east in September. I think I first ascertained that they would be here in September when they were here. I don't think that I knew it until Plant told me he was going to take them around and show them his machinery the morning he called me up on the telephone.

709 I was present when the final papers were signed closing the deal with Mr. Plant. They were signed at Mr. Herrick's office. I should think it was somewhere from midnight until three o'clock in the morning. I remember staying quite a while.

It was the morning before this that Plant telephoned me, the morning after the meeting at the Puritan Club. The papers were signed on the night of the day when Mr. Plant had telephoned me in the morning that the deal was consummated and that he was going out with the St. Louis people that day. The papers were signed that night.

As to whether I know why the papers were not signed before four or five o'clock the next morning, I suppose they were drawing the papers. I know why they weren't signed during the day; because Mr. Plant was away with the western men, or so he stated to me. I didn't see Plant until that night at half-past eight or nine o'clock.

I didn't say that Plant had been given a check for $500,000 that morning. It was taken to Mr. Carr, his lawyer.

As to why I was so anxious to become a director of the United Company when I was not at the time interested in the company and felt that I could not put Plant's machinery in my factory, it was simply because I believed there was value to the shoe trade and to the United Company and thought the shoe trade would be advanced. As to why I was so anxious that the United Company should buy it and why I didn't go to some other shoe manufacturer, that was the only concern I had ever considered, and that was all Mr. Plant had ever suggested. I should have been glad to have got the $250,000 for selling it to anybody. I felt sure that I couldn't accept $250,000 after I was elected a director in the company. When Mr. Winslow finally declined the proposition, before I was elected a director, I didn't see how, with the trade entirely off, there was $250,000 coming to me. I then took up the matter of the director-
710 ship. I have nothing to do with installing machines in our factory. I do not know when changes are made in machines. We have different men in direct charge of that in different factories, but my partner, Mr. George S. Johnson, would have general charge of that policy.

Nothing has been said to me about changing the welters that we now have in our factory for other welters. As to whether I know whether any welters have been changed in our factories within the past three years, they undoubtedly have. I should think our people would be very much behind if they hadn't the latest; but I don't know. I have never advised any changes.

By accident I ascertained that the automatic cutting off of the welt has been put on the United Company's machines in our factories. They happened to tell me how good it was. I think we have it, because otherwise they wouldn't tell me how good it was, how well it worked. I never took the matter up with any representative of the United Company or with our own company with a view to having the change made.

Direct examination resumed:

Matters of detail management in our different factories are left to the superintendents of the different factories under Mr.

Johnson's supervision. I absolutely do not concern myself with the kinds of machines we have in our factory.

711 DECEMBER 12, 1913.

SIDNEY W. WINSLOW, witness for defendants, resumed.

Cross-examination resumed:

As to the list which I gave of a number of concerns that were manufacturing eyelets, I can't say whether the Caseley Nelmes Company makes only corset eyelets and doesn't make shoe eyelets at all. Any eyelet manufacturer can make eyelets for the shoe trade. The machinery that any of them has in his factory is perfectly adapted for that manufacture. I think all eyelet manufacturers make eyelets that would be used in shoes. It is purely a question of whether they attempt at all to cater to that trade.

I know that the Scoville Manufacturing Company makes shoe eyelets. I can't state whether R. N. Bassett & Company do. I have no doubt that the Waterbury Brass Company and the Waterbury Manufacturing Company make shoe eyelets. Eyelets are not distinguished by being shoe eyelets. They are called a number or size, and the use to which they are put is purely arbitrary. From very small sizes up to the very large they are used for shoe eyelets. Large hunting boots have large eyelets, and the so-called invisible eyelets, the eyelets inside of the upper of the shoe which you don't see on the outside, are very small eyelets.

It is not true that the only concerns that deal to any extent with shoe eyelets are the Rimmon Company, the S. O. & C. Company, the Rhodes Company, the Fast Color Eyelet Company, and the Atlas Tack Company.

I notice that the Fast Color Eyelet Company is really a duplication in this computation (defendants' Exhibit 234). The Rhodes Company makes the brass blanks upon which the fast-color material is placed to make the fast-color eyelets.

In the list of machines used by J. Brown & Sons in their factory in Salem, Massachusetts, I have designated by the word "United" all the machines which have been obtained by J. Brown & Sons from the United Company. As to the

712 McKay sewing machines on that list, the three model S machines were obtained from the United Company and the ten other McKay sewing machines are the regular McKay sewing machines obtained from anyone. I assume that model S means the three, and I really think that model S is a misprint for model B.

This list was made up by Mr. Sampson. I communicated with Mr. Brown personally and asked him if he would allow our people to make a complete inventory of the machines in his factory. He agreed to that, and I asked Mr. Sampson to have it done. I have been through Mr. Brown's factory, but I didn't go through to make this computation. I am relying upon information obtained by my representatives. Of course I don't know personally whether or not the Brown Company got all these machines that are not designated from somebody else. I have not the slightest reason to doubt it, but I will check it up if it is desired that I do it personally.

As to whether the list embraces all general department machinery that is in use by Brown & Co. as well as other machinery, to the best of my knowledge and belief this list embraces every machine that Mr. Brown had in his factory. He was manufacturing McKay shoes and, I think, was making no welt shoes at all.

All the machines under the heading "Lasting room" were obtained from our company. He has 18 metallic fastening machines obtained from our company—three loose nailers, 5 universal sluggers, one grip slugger, 1 heel protector driving machine, and eight staple tacking machines.

As to whether or not it is a fact that some of these machines were obtained from concerns that since the purchases were made have been absorbed by the United Company, as the Bresnahans, I don't know from whom Brown obtained the machines. For instance, he might have obtained a Bresnahan machine from Holt or from any other dealer, not from Bresnahan directly.

I know that not all the machinery in his factory that is under lease was obtained from our company; for instance, we don't handle the Reece buttonhole machine. Those machines do operate upon the upper, but they are just as important as any other machines in the factory.

713 We developed the clicking machine. As to whether that is the only clicking machine in existence, clicking is a trade name for cutting uppers. Any dinking machine or dieing-out machine can be used for the clicking operation and are so used in several different grades of work. I know of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours.

Dinking machines were used very largely for cutting outsoles, but I knew some factories where they were used almost exclusively for dieing-out uppers. They are used especially in heavy work and where the leather to be cut was cut in large patterns. They were not used to a large extent in cutting

small shoes like ladies' shoes and the small parts of men's shoes. That work had always been done by hand. Frank Anderson, in New Hampshire, used those machines to a very great degree in cutting out his uppers. Machines for doing that work could be obtained from the Seelye Manufacturing Company and various others.

The Miller Treeing Machine Company manufactured the tree feet that are used to finish the shoes on in the factory, and it may have made the shoe trees that are put inside shoes when they are taken off. Our company acquired the business of O. A. Miller and formed the O. A. Miller Treeing Machine Company.

As to whether that company has any competitor, I think the Boylston Company are competitors, if I am correct in my understanding that they own the Copeland treeing machine. Mr. Copeland has been putting out for years a machine for treeing shoes.

In regard to the purchase of the Ross-Moyer Company, of Cincinnati. We made that purchase because Mr. Sam. Ross wanted us to take over the business of which he was the head if we were going to establish our own office or our own store to take care of our business in that section.

The Ross-Moyer Company had not been acting as agent for the Goodyear Company before the consolidation. It had carried at its stores a stock of spare parts for the Consolidated & McKay Lasting Machine Company, and it also carried a stock of spare parts for the McKay Shoe Machinery Company. The Ross-Moyer store was used as headquarters for the men of both of those companies when they were in that territory. They called there to receive word if a manufacturer wanted to see them.

714 I could not say whether the Ross-Moyer Company handled quite a lot of shoe machinery that was manufactured by other people. It is not true that after its purchase that company was stopped entirely from handling shoe machinery of any kind that was put out by other concerns. They have handled almost anybody's machinery. The United Company handles machines of a number of other people. That does not mean that we carry them in our general department and sell them outright. If we have a demand for a machine, or if a manufacturer is fitting up a factory and we know that somebody else's machine is better fitted for particular work, we advise him to adopt that and frequently handle it for the other concern. An illustration is the machine for evening and grading the soles of shoes, made by the Lacene Manufacturing Company. They

are the only people that make a machine of that sort. If we believe that it is for a manufacturer's advantage to use that machine in making shoes, we advise it. Another illustration is the Lockett crimping machine. If a man's work is such that he ought to use one of those machines, we advise him to. Manufacturers really treat the United Company as an engineering corps, and we make it a part of our practice and policy to advise a manufacturer fitting up a factory to put in that equipment that will produce his shoes the best and cheapest.

As to whether we ever advise a manufacturer to put in somebody else's lasting machines, we know of no lasting machines, or welting, or stitching, or metallic, or heeling machines that are as good as those we make ourselves. When others produce something better we shall advise the manufacturer to put in that machine under proper conditions. As to whether we will buy them out if they produce something better so that we can put it on the market, it does not follow because something better is gotten up that we can buy it, and we should not buy it
715 and pay more for it than it is worth to our customers for us to have it.

In regard to the Plant purchase, it is true that I had some gentlemen examine the Plant factory and make a report to me. Among them were Mr. George Warren, Mr. B. F. Mayo, and Mr. Howard. They didn't at that time make a report in writing. Later they made a report to me in writing regarding the various improvements that they thought we could make to our machines by adopting certain improvements they saw in Plant's.

Q. When was that report made? Was it some time after the purchase was actually made and there was a question as to its validity, or was it before?

A. No; it was made, as I remember it, to show what machines or improvements could be adopted to benefit our machines and in what respects. Where there was any duplication certain machines were not as good as ours. Also to show if an invention in Plant's machines was in commercial shape or condition, or if it required and was advisable to try to develop it—that is to say, whether it gave promise of being of value to our customers in the trade.

This report was rendered after the purchase was made and entirely in the line of business, advising the adoption in our machines of such improvements as we could adopt for the benefit of the trade. This was not in connection with the earlier verbal report that they made to me.

Messrs. Endicott, Keith, and Hanan examined Mr. Plant's machines at his request and with my approval. They didn't make a written report.

716 Q. There was one other matter in connection with that I would like to call your attention to. You knew before that purchase was consummated about Mr. Plant's negotiations with the western shoe manufacturers, did you not?

A. Of course I heard, as I suppose a great many people did, about his talk with western manufacturers, but it had no bearing with me at all, Mr. Fowler, didn't enter into the case at all as far as I was concerned.

Q. You observe I did not ask you that. I asked you if you had heard of the negotiations.

A. I had heard that western manufacturers were in town, or coming to town or had been here, but whether he was negotiating with them or they were negotiating with him to buy the machines, or have anything to do with it, I did not know. And I don't know now—except——

Q. As a matter of fact, that very thing was discussed between you and Mr. Plant, wasn't it, at one of your meetings, as to whether or not those fellows were negotiating with Plant?

A. I couldn't tell what Mr. Plant said.

Q. Didn't you tell Mr. Plant that it was not true—it was a bluff—and that they were not negotiating?

A. No; I didn't tell him anything. I don't think I made any remarks to Mr. Plant whatever except similar to what I have made to you, that I was not interested in any talk regarding that.

Q. Didn't he present to you a check already drawn for $50,000 as a wager that they were negotiating and were going to come here to Boston?

A. Mr. Fowler, I can't help thinking that that is born in your mind. I never heard that statement before or anything resembling it until this moment.

Mr. FOWLER. It was not born in my mind. I don't know whether it is true or not.

The WITNESS. I never heard of anything of that sort or anything like it.

717 Mr. FOWLER. I don't know Mr. Plant and couldn't have imagined it unless I had heard about it.

Q. Then you deny that anything of that sort occurred?

A. Absolutely. I never heard of any such suggestion before.

With reference to the covenants in the several contracts of purchase which obligate the vendors not to engage in business for certain terms of years, etc., and the covenants relating to

patents, that was entirely left to our attorneys who drafted the contracts. I always looked upon those things just the same as what I found in a deed or lease. Those attorneys were Mr. Storrow, Mr. Howe, and Mr. Donham. Mr. Donham was secretary of our company, and Mr. Howe and Mr. Storrow were directors; but they were counsel for our company, too. They were employed by the company to do their work.

I personally own the control of the Naumkeag Buffing Company. As to whether the repair parts for that machine are manufactured and furnished by the United Company, they are furnished by the Naumkeag, and the United Company acts as agent in the sale, as they do for other people. We handle lots of other people's goods. The repair parts for that machine are not handled or put in by representatives of the United Company.

718 No service at all goes with the Naumkeag machine. The manufacturer buys his own parts or buys the disks that were testified about. He buys them from the United Company or from the Naumkeag Company. In case he buys them from the United Company, that company gets a commission for handling them, as they do lots of other goods.

I do not know what percentage of welt shoes produced in the United States are made upon the United Company's welting machines. As to whether as much as 90 per cent are made upon them, I don't know, and I testified yesterday that it would be a guess.

As to whether the United Company filed a bill against Fred J. Thompson in 1904 on the Briggs patent, and as to whether I swore to that bill, I presume that I must have sworn to it, if there was such a bill filed. As to whether I am in the habit of swearing to everything that my attorneys prepare, of course I believe what was in that bill.

Mr. FOWLER. I will read you this paragraph from that bill:

"And your orator further shows, upon information and belief, that in the year 1888 its predecessor, the said The Goodyear Shoe Machinery Company, of Hartford, Connecticut, commenced to manufacture and to lease to shoe manufacturers shoe sewing machines operating to form chain stitches in accordance with the method patented in said Letters Patent No. 461,793, and from that time its predecessors, the said The Goodyear Shoe Machinery Company, of Hartford, Connecticut, and Goodyear Shoe Machinery Company, a corporation of the State of Maine, and your orator have continued so to do, and your orator is now engaged in manufacturing and leasing such machines, and it is now and it and its said predecessors continuously have been since the year 1888, able and ready to meet

and fill all demands for such machines on the part of shoe manufacturers or other persons desiring to use the same; that such machines have become widely known to the trade as the 'Goodyear welt and turn machine,' and not only have practically supplanted all prior machines for sewing welt and turn shoes, but have largely increased the number of welt and turn shoes sewed by machinery, almost entirely superseding hand work in the sewing of welt and turn shoes; that your orator and its said predecessors have leased to shoe manufacturers between twenty-one and twenty-two hundred of such machines, and that a large proportion, to wit, more than ninety per centum, of all the welt and turn shoes made in this country are sewed upon such machines."

Q. Were the allegations of that bill true at that time?

A. I have no doubt they were.

719 As to the bill filed on March 11, 1908, against the Duplessis Shoe Machinery Company and R. H. Long, upon the same patent, which was signed by me, and which contained the following allegation:

"Your orator and its said predecessors have leased to shoe manufacturers between twenty-five and twenty-six hundred of said machines, and that a large proportion, to wit, more than ninety per centum, of all the welt and turn shoes made in this country are sewed upon such machines."

I undoubtedly believed that that allegation was correct at the time I signed the bill.

720 At the request of counsel for petitioner, I produce a report of B. F. Mayo and George E. Warren to C. H. Willson, general manager of the United Company, dated November 26, 1910, relating to patents previously owned by Thomas G. Plant. This is plaintiff's Exhibit 267.

PUTNAM, J. How near the date of the Plant purchase was this report made?

Mr. CHOATE. About two months later. If I may ask your honor's attention to a sample of the work they did—I open anywhere, and I open first to the clicking press. That is supposed to be a photograph of the Plant machine, and there is a photograph of the United Company's machine. And the reading is as follows:

(Mr. Choate then read the matter under the heading "Clicking press" on pages 1 and 2 of the report, which matter is reproduced in the record, Vol. —, on pages — and —.)

Each machine is taken up in that way with photographs of the two, and the details of the advantages or disadvantages of each are pointed out. Some machines, it is suggested, are not so-

good as the United Company's; some machines or parts are suggested as better, and they advise the adoption of those they regard as improvements on the United Company's machines.

The WITNESS. The night the Plant purchase was consummated there were present Mr. Howe, Mr. Fish, Mr. Herrick, Mr. Henry B. Endicott, Mr. George E. Keith, Mr. Plant and his lawyer, Mr. Carr, as I remember. There may have been others. Our experts, Messrs. Mayo and Warren, were not there. I believe the papers were completed that night. They had been preparing them, as I remember, from some time in the forenoon of that day.

Regarding the partial list of concerns engaged in shoe machinery and related lines of business which have been offered either directly or indirectly for sale to the United Company, but none of which have been acquired by the United Company (defendants' Exhibit 233), I have not gone over that list since my previous examination in respect to it. I do not know the address of the Acme Heel Protector Manufacturing Company, but my remembrance is that it was St. Louis.

The Alliance Shoe Machinery Company, Empire Sole Laying Machine Company, Excelsior Slugger & Tacker Company, and the Imperial Welt Machine Company were not, as I understand it, all one concern at the time they were offered to us, but I think they afterwards became one concern. I can not say whether the other concerns were acquired by the Alliance Shoe Ma-
721 chinery Company and go under that name now. I do not know where it is located. I did not attempt to go into detail as to whether the concerns on that list were in business to-day and as to where they were located, and I am only familiar with some of them whom I happen to know personally. I do not remember who it was that offered to us the properties on that list. You remember this covers fifteen years.

I do not know the address of R. S. Beach and what he does, and do not know whether he is engaged in business now. I do not know that the Flagg Manufacturing Company became insolvent years ago, but after the death of Dr. Flagg, who controlled that concern, there was considerable trouble, and I think that that company and the Globe Buffer Company and the Union Edge Setting Company were all taken over by the Boylston Manufacturing Company, and I understand that they are now identified with that company.

By the Canadian Shoe Machinery Company I mean the Canadian General & Shoe Machinery Company, Limited, as I remember the name. That concern was doing business in Canada, and as I remember it was doing business here, too. I couldn't say whether it is doing business here now. It has not been acquired

by the United Company, although they endeavored to force us to buy it. I believe those people were at the bottom of the trouble in Canada against us. There has been absolutely no understanding or contract between that company and our company. For years they have repeatedly tried to blackmail us into buying them, and we have had nothing to do with them.

The name of F. W. Colburn is not familiar to me, and I don't know what he does or what he was doing then. David Cummings and W. D. Brackett were doing business in shoe machinery, manufacturing heel-trimming machinery. That was to trim the heel after it had been fastened to the shoe. As to whether 722 they quit that kind of business some time ago, I couldn't say. Nor could I say whether Brackett was a shoe manufacturer in New Hampshire or whether he is now here in Boston in control of the Boston office of the Hamilton-Brown Shoe Company. I know that David Cummings was a shoe manufacturer and has died within a year or two.

~~(Mr. Choate then read the matter under the heading "Clicking press," on pages 1 and 2 of the report, which matter is reproduced in the record, vol. —, on pages — and —.)~~

A. Denslinger & Company, according to my memorandum, were in Philadelphia, and their business was edge trimming, buffing, and finishing machines. I do not know the address of E. L. Dunbar. He was engaged in manufacturing wood heels. Wood heels are usually covered with fine upper leather and are used on women's and misses' turn shoes. Our company never engaged in that business.

As to whether Mr. Hamel, who was on the witness stand, is the successor to the Duplessis Company, I believe so, but am not qualified to testify as to the actual condition of that concern. William E. Frame was manufacturing hand impression wheels at Brockton. Those wheels are used for finishing the outer edges of soles or for finishing around the outer edges of heels. The Frechette Pegging Machine Company was, as I understand, located in Canada, and had some arrangement with Fifield for manufacturing pegging machines. That machine was for driving wooden pegs like the Davey pegging machine and the other two pegging machines that I have mentioned. I can not say whether the Frechette Company is still in existence. We did not buy them.

I have not the address of the Hargraves Hook Machinery & Eyelet Company, but think they are located in or near Providence. As I remember, their business, it was the manufacture of hooks that are set in the upper parts of shoes, and of machines

for setting those hooks. Irving L. Keith was located in Haverhill, and his business was in shoe tacks and nails and shoe findings. I can't tell you whether he is still engaged in business, but assume he is. I have made no effort to ascertain whether any of these concerns is doing business now. I know many of them are in business to-day, but others I do not know about.

723 I believe the Lacene Manufacturing Company is located at Manchester, New Hampshire. Their business is the manufacture of lacing machinery and the Nichols evening and grading machine. That is a machine for automatically reducing the thickness of outer soles the least amount that will bring a level surface. There is no other machine for doing that work, and we never put out a machine for it.

I can not state where the Larsen Machine Company is located. It manufactured sewing machines for attaching outer soles. I can't state whether they are still in business. I never personally came in contact with them and I think the last I heard of them was two or three years ago. I do not know how many machines they actually put on the market, and I am not certain that they are not doing business to-day. They might be without my knowing it.

The McDowell Shoe Machinery Company was located in Lynn, and they were trying to develop a line of heel shaving, slugging, loose nailing, and burnishing machines. My memorandum shows me that this was back in 1899 or 1900. I think they did not succeed and they may have transferred their business to some one else—I don't know. I only know they tried to sell to us.

The North American Chemical Company was engaged in the business of furnishing material for filling in between the outer sole and the inner sole in the manufacture of welt shoes. I can't state whether our company ever produced any material of that kind.

Henry Parsons tried to sell his whole business to us, including dying-out machines and a sole-cutting machine. I don't know how much their business included or how extensive it was. General Darling (clerk of the District Court) can tell about that business, as he is managing it now. As to whether the United Company duplicated the Parsons machines, we manufactured machines for doing that kind of work, but I don't think we duplicated his machines. I am quite sure they are in business now. I do not understand that they went into the hands of a receiver.

724 My remembrance is that the Peck Lacing Hook Company was located in Providence, Rhode Island, and made machines for setting lacing hooks, and also made the hooks and shoe shanks. I can't state whether they are still in business. The Peckham Manufacturing Company were manufacturing shoe shanks. I do not know whether they are still in business. The Potter Shank Company manufactured shanks, pegwood, and various findings, and became a part of the American Findings Company or the Union Findings Company.

The Shawmut Machinery Company was located on Lincoln Street in Boston. It manufactured several machines, including strap covering and stamping machines. It is still in business. George Shipman was manufacturing a number of different kinds of eyelet machines. I have no information as to whether he is still in business.

I have no memorandum as to where the Specialty Shoe Machinery & Tool Company was located. Personally I don't remember anything about that concern. Many of these concerns would be brought to me and I would say that we were not interested. I do not recall anything about the Standard Button Works, except that they made shoe buttons and machinery for making buttons.

I do not know where the George H. Stevens Shank Company was located. Tenney was manufacturing shoe mallets at Worcester, Mass. I don't know whether he is in business. I made no investigation to find out who were or who were not in business at the present time. I can not state where the Tyler Shank Company was situated, and don't know whether they are still in business. My recollection is that the Vose Machinery Company was at Lynn and manufactured trimming machines. I do not know whether that concern is still in business.

725 My remembrance is that H. A. Webster testified in this case, and that his machines went into the Haverhill Machinery Company. I can not say whether H. A. Wheeler is still engaged in business, and my memorandum does not state where he was located. Under Wolfe heel building machines my memorandum gives the name "American Heeling Machine Company." I assume from that that the Wolfe heel building machines were offered to us by the American Heeling Machine Company. I do not know who they are.

(By agreement of counsel examination of Mr. Winslow is suspended until he has completed investigations being made at request of counsel for petitioner.)

726 DECEMBER 16, 1913.

ROBERT F. HERRICK, witness for defendants.

I live in Milton, Massachusetts, and am a member of the bar. I have been practising since 1888 and am associated with Mr. Fish in the firm of Fish, Richardson, Herrick & Neave.

In the year 1910 I attended meetings with Mr. Plant and Mr. Winslow. The first meeting that I attended with both Mr. Winslow and Mr. Plant was in August, at the Touraine. We met later at the Puritan Club.

The first conference I attended with Mr. Winslow and his associates was one night at the Algonquin Club. It may have been the latter part of June or the early part of July. Mr. Endicott, Mr. Johnson, I think, some of Mr. Endicott's men, Mr. Keith, Mr. Connor, and Mr. Winslow, and one or two others were present. I heard the three gentlemen I named make oral reports in regard to the Plant machinery.

As to when and by whom Mr. Plant's desire to dispose of his property was again called to my attention, I remember that Mr. Harry Smith, of Worcester, came to my house at Wareham and asked me to meet Mr. Plant. That was along in the middle of the summer. I am not sure just when. Mr. Smith also came to my office in Boston and asked me to meet Mr. Plant. Those are the two times at which Plant's desire to sell was brought to my attention, if Mr. Smith was correctly representing Mr. Plant's desire.

I told Mr. Smith I would meet Mr. Plant if Mr. Whipple, who was acting as Mr. Plant's counsel, approved of it. Mr. Whipple did approve, and I met Mr. Plant at the Touraine some time in the latter part of July. That meeting was arranged by Mr. Smith. Mr. Plant and myself were present.

I am very sure that this was the first time I had ever spoken to Mr. Plant. There was a long discussion with reference to his wishing to sell what he had to the United Company. The discussion turned largely on the point of insisting that the United Company make stipulations as to what they would do in respect to suits if they saw in his machines, upon examination of them, what they considered to be infringements of their rights. He also discussed the possibility of an arrangement by which he could make a trade entirely independent of any examination of the machinery. There had undoubtedly been some discussion of a possible sale before this, because his argument with me was largely on the point that there ought to be an agreement that no suits should be brought as a result of an examination of his machines. That meeting was not sought by me.

727 Very shortly after this meeting Mr. Plant asked me to go out to his factory, and I went out and talked with him again. He talked again about wishing to negotiate with the United Company, but said he was unwilling that they should make any examination of the machinery, or that if they made any examination it should not be by technical men. I told him that there could be no negotiations excepting on the most careful examination and that there could be no agreements whatever as to bringing any suits. He said: "Never mind that, come through, and I will show you what I have got," and he showed me all his machinery, which I had never seen before, all his systems and the new conveniences he had for his help; he made a complete showing of the whole factory and the business.

I had acted as one of the counsel for the United Company off and on for some years; and my firm had been counsel for the company for a great many years. My firm had had charge of its patent litigation and were acting as solicitors in the patent litigation and in other litigation then being conducted against Mr. Plant.

At that time—the first time—the sale of the shoe manufacturing business was spoken of by Mr. Plant to me and he showed me a long memorandum in regard to the advantages to the United Company of buying the business.

728 As to how he presented that matter to me in connection with his proposed sale of his inventions and patents on machinery, it was simply a general statement why he was anxious to get out of business, and that he would like to not only sell the interest he had in machinery, in his patents, inventions, but that he also would like to sell his interest in the shoe business; that he would like to get the money and retire; and he said that he had developed a great system there; that he kept himself free from any alliances with anyone else; that he had always planned to so arrange himself that he would be free to sell out to the United Shoe Machinery Company. By "system" I mean the development of his shoe business, in the manufacture of shoes, and also when I said "system" I meant particularly his system of handling his people in the factory, which he was very proud of, of handling his help, and he showed me practically everything in the factory, I think.

As to the kind of shoes Plant was making, I only know of my general knowledge that he made "Queen Quality," and I suppose mostly women's shoes; that is a well-known shoe and anybody that has been in Boston has seen it in the newspapers for years. I think I saw a few men's shoes out there. The Plant factory

was a very large brick building, upward into the hundreds of feet, whether 250 or 300 I have no idea. I think it was five stories high and perhaps 80 or 90 feet wide, and it had a brick ell with an office on top, and it was practically a brand new factory.

Q. Did you report at all these overtures of Mr. Plant's to Mr. Winslow?

A. Each time that I heard anything at all about this I would tell Mr. Winslow about it.

My recollection is that Mr. Plant, Mr. Winslow, and I first met in the latter part of August. I remember it was in August, but I have no idea as to the date. We had a long discussion, in the course of which Mr. Plant urged the value of his inventions, and which was mainly on the question as to how there should be any examination and the extent of that examination. That went on for an hour or two.

With respect to this Mr. Winslow took the same position; that is, that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thor-
729 ough examination. At this meeting there was a long discussion as to whether the United Company should be free to bring patent suits as the result of anything that was seen during the examination, and there was some discussion about the fact that patent suits were already pending. Mr. Plant said it would be fair enough to bring suits that had already been planned, but that no other suits should be brought until a reasonable time after an examination, if one was made. That discussion went on for quite a little while. There was a list of patent suits that had been prepared by the United Company, but had not yet been filed, which I was to give to Mr. Emery, Mr. Plant's attorney, and there was to be an understanding that no new suits should be brought until a time, I think thirty days, after the examination.

The only time I heard Mr. Winslow and Mr. Plant talking together was this time in the Touraine, but the talk was just the same talk between Mr. Plant and myself and between Mr. Winslow and Mr. Plant, and that was that Mr. Plant would urge the very great value of all this to the United Shoe Machinery Company, and the answer was that: "If it is worth that, why it won't do any harm to see it. If we see it has got value, we are perfectly ready to negotiate on the basis of whatever actual value it has got, and there will be no hurry about it, and we will not deal at all without seeing it, and then we will only deal after

the examination, and if we can't have the examination we won't deal at all."

At these meetings in August I think Mr. Plant's stipulation that the company should put up a million dollars before it could look at his machines had just died away. I don't remember any more about it. He was then stipulating with reference to agreements not to bring patent suits and things of that sort. The only understanding about that which I remember is the one I have just spoken of, and that is there should be no patent suits brought, new patent suits brought, as the result of this examination for a period, say of thirty days after the men were through examining the machinery out at Plant's factory; that the suits that already were prepared should be filed at any time we saw fit, and a list of those prepared and handed to Mr. Emery.

It is rather hard for me to remember whether during these days or weeks of which I have spoken I had any calls or communications with Mr. Smith in Mr. Plant's behalf. Mr. Smith saw me at least four or five times in all, with the purpose of

730 bringing about a meeting with Mr. Plant and myself, and urging by long talks importance to the United Company of acquiring the Plant machinery.

I think the first time I heard of the matter of Mr. Plant's disposing of his stock in the shoe factory was when Mr. Plant brought it up himself in his own office in the Plant factory. I think I never heard of it through Mr. Smith at all. Nothing whatever of that sort was brought to my attention during the negotiations in June. I never heard of it until Mr. Plant spoke to me about it. He had a long memorandum, which he let me read, about the value of that business to the United Company, partly as an opportunity to exploit new machinery and to illustrate new methods to shoe manufacturers. He told me definitely how much money they had made. I have forgotten how much it was; but it was a very profitable business.

I know that an examination of the machines was made later, and after the examination I met Mr. Plant, Mr. Carr, and Mr. Winslow at the Puritan Club in the afternoon. That was on the 20th day of September, 1910.

731 We met in the afternoon and were there until about ten o'clock at night. It was just a long talk about the matter of the sale of Mr. Plant's interest in the shoe business, the sale of his interest in the patents and machinery, the earnings of the Thomas G. Plant Company and the value of its stock, the importance of Plant's patents and a long detailed discussion as to particular features of his machinery like the welt holder, the

automatic stop, his flexing machine, his special insole, and his method of dieing outsoles instead of cutting them. Mixed in with this talk were arguments that it ought to be bought because it would be of such great value to the United. Up to seven or eight o'clock there had been very little discussion as to figures, and Mr. Winslow and Mr. Carr were both out of the room when Mr. Plant turned to me and said: "I am sick of all this waiting. Everybody advises me to sell. I have talked with Mr. Whipple; he advises me to sell. I have talked with Mr. Brandeis; he advises me to sell. And everybody advises me to sell. I could keep on and make a lot of money, but I prefer to get out of the business and pay my debts and retire on my cash." Then he said something to the effect that he could talk to me, and perhaps could not talk to Mr. Winslow without getting mad, and then he said: "I will be willing to take $3,000,000 of money and a million and a half par of the stock of the United Shoe Machinery Company, and give up all my stock in the Thomas G. Plant Company, and also everything I have got in connection with the shoe-machinery business, just stepping completely out of it, and turning everything over to you." I told him that there was some sense in that proposition, because if his machinery was of the value he said it was then the stock would be so much more valuable. Then I went out and brought in Mr. Winslow and Mr. Carr and repeated this to them, and Mr. Winslow and I went out of the room together and talked it over. Then we came back and told Mr. Plant that as far as we were concerned we would accept the proposition, but that it was necessary for Mr.
732 Winslow to communicate with Mr. Barbour and other members of the executive committee. Mr. Winslow said that he would get Mr. Barbour on the telephone as soon as he could and then would let Mr. Plant know, and the matter could be ended. We expected to see other members of the executive committee that night.

Q. Up to that evening had Mr. Winslow made any offer or proposition to Mr. Plant, to your knowledge?

A. There never was any offer made to Mr. Plant at any time during all the negotiations. Even that evening Mr. Plant made that offer definitely to me and I repeated it to Mr. Winslow.

There had been a number of offers by Mr. Plant of different amounts, some of which I knew nothing about then, but have heard about here, but there had been offers of $7,000,000 in cash and $6,000,000 in cash, and they were both in relation to the machinery patents alone and did not include the shoe business, and that night there was more or less talk on Plant's part of

seven or seven and a half million dollars in money before he and I were alone that time.

It was either the night of the 21st or the morning of the 22d that we got word from Colonel Barbour. I think it was the night of the 21st. On the morning of the 22d a check for $500,000 payable to my order was given to me, and a couple of hours later I handed my check for $500,000 to Mr. Carr, Mr. Plant's
733 attorney. This payment was made because Mr. Plant insisted that there ought to be something paid on account, and Mr. Carr, as I remember it, named the figure. As a matter of fact, later, when this contract was signed, there was $500,000 paid to Mr. Plant, so that there was a million dollars paid, but the $500,000 check was given to me on the morning of the 22nd. I gave it to Mr. Carr and simply said: "This is the $500,000 on account." I gave him my own check, I should say—not this one.

I saw Mr. Carr on the morning of the 21st while I was waiting to hear from Colonel Barbour. We began to block the papers out in conversation that day, although I don't think we drew any. I did not see Mr. Plant on the 21st.

It was on the 22d that we started drawing the papers, and Mr. Donald, of our office, Mr. Donham, Mr. Howard, Mr. Carr, and Mr. Whipple worked on the papers. They dealt with a good many matters. I think Mr. Plant actually came into the office that night, the night of the 22d, about seven or eight o'clock. The papers were finished that night. We were there until three or four o'clock in the morning.

There were long discussions about many things; about everything came up which can be conceived of in connection with a going business which was being turned over for a definite sum of money in the middle of the week. There were discussions about merchandise which Plant had on board cars, about pay rolls, and about bills which Mr. Plant owed, some of which were for merchandise already shipped, and all these things had to be discussed. We did not think of them until they came along, one after another. There was no discussion or argument on the main point of the contract. We could have done that in an hour or two. It was the coming up of these details which had not been foreseen that protracted the session into the morning.

734 As to the matter of the obligations to Stanbon and the obligations with Stanley, I do not remember now how it was dealt with, because it was so intricate and there was so much of it that I could not state it without looking at all the papers again. There were fifty points of one kind and another.

I did not know at the Puritan Club anything about Plant's relations with or obligations to Stanley or Stanbon. As to Mr. Plant's attitude about those two matters, he was a pretty stiff trader. He would think of one thing after another, and say that it ought to be taken care of, and then there would be a long discussion.

As to patent suits against Mr. Plant which were brought in the summer of 1910, some were brought on the advice of our office, as I remember it, while other suits relating to machinery with which other people were more familiar were brought on the advice of Mr. Phillips. There was also a suit pending against Mr. Plant on his lease contract with the United Company, and that was being conducted by our office. These were suits against the Thomas G. Plant Company which had certain leases of the United Company. Plant had notified the United Company to take the machinery away, and he had thrown it out of his factory. The United Company brought suit in the Massachusetts Superior Court on those contracts for the royalties due under the terms of the leases. These suits were pending at the time this matter came up.

When Mr. Smith first came to me he told me he had had a talk with Mr. Barbour, and he also told me about a meeting between Mr. Barbour and Mr. Plant in New York, where Mr. Barbour's place of business is. Smith told me he thought I was the man they wanted to see, with quite a little complimentary language. That is all he said; he did not give any really good reason. I mean that he referred to the important position which he said I occupied.

735 Cross-examination:

The first time I met Mr. Smith in connection with the Plant matter was at my home at Wareham. I had not arranged for a meeting, excepting that he telephoned me and asked if he could see me if he came down. I do not think I talked to him ten minutes, because I didn't even know him. He started in to tell me that he would like to bring about a sale of the Plant machinery. Of course I had heard a great deal about it before that and I had known what was going on. I had very little to say to him except that I didn't see any reason why I should talk with him, and I was sorry he had had that long trip for nothing. I don't think I asked him why he was representing Plant.

I did not at that meeting arrange for another meeting with Mr. Smith. I practically told him that I did not care to talk with him. I must have told Mr. Winslow about this as soon as I got a chance, because Mr. Smith was a new feature in the

situation. I should say that this first meeting with Mr. Smith was either the last part of July or early in August, 1910. After this trip to Wareham Mr. Smith came to the office and it was then that he suggested that I meet Mr. Plant. I did not inquire why he was interested in the Plant machinery and I did not suggest that I have a meeting with Mr. Plant. He asked me if I would meet Mr. Plant. I told him that if Mr. Whipple would approve of it, I would meet him. Mr. Smith arranged for a meeting with Mr. Plant and me at the Hotel Touraine. Mr. Smith came into the room with us and then went out. Mr. Plant and I were alone.

Mr. Plant took the principal part in the discussion. What he said at that meeting was the same as at the other meetings; that is, he went over his machinery in very great detail and pointed out what in his opinion were its very great advantages. He commented particularly upon his insole machine, his flexing machine, and with a great deal of detail on certain devices
736 which he had added to the welter and stitcher. He talked about certain things that I didn't understand. He made no proposition at that meeting, but said that he had already talked about selling to the United Company, trying to, and that there was great difficulty in regard to this matter of examination. I knew of this as early as the first meeting at the Algonquin Club, which I testified about, which was prior to my meeting Mr. Plant at the Touraine.

The meeting at the Algonquin Club, according to my best recollection, was the end of June or the first of July. I can get those dates. Mr. Plant was not at the Algonquin Club. Mr. Winslow, Mr. Endicott, Mr. Johnson, I think, one of the foremen for Mr. Endicott's company; Mr. Keith, Mr. Hanan, Mr. John Connor, Mr. Fish, and I were there. I had been told that Plant had made a proposition to sell out before that. I never met Mr. Plant before I met him at the Touraine. I didn't even know him.

The meeting at the Touraine was some weeks after the meeting at the Algonquin Club. Mr. Plant did not make any proposition at the Touraine, but he said that his great difficulty was how to get at the matter of selling, that Mr. Winslow had refused to go ahead without the examination of the machines, and that he wished to see if there was not some way he could go forward without having all these examinations and the possibility of patent suits. Mr. Plant did not say anything about being heavily in debt. He did not mention that at all.

Mr. Plant and I did not come to any conclusion at this meeting. He left it that if no negotiations could go on without

examinations, and if we would not agree to have our hands tied in regard to any possible litigation, he didn't care to go forward.

I did not arrange to meet him again, but I think Mr. Smith arranged the second meeting, when I went to Mr. Plant's factory. I didn't examine the machines at the Plant factory. He showed them to me. I didn't know enough to examine them. . I went out there alone.

737 I am sure I told Mr. Winslow at the first possible opportunity of my whole conversation with Plant. I did not suggest that anything further be done, nor did Mr. Winslow make such a suggestion to me.

I have spoken of meeting Mr. Plant twice. I think I met him a third time within two or three days of the trip to the factory. I think he took me to drive and discussed again the question whether or not it was impossible to go ahead without these examinations and without the question as to lawsuits. Nothing came of that meeting.

I don't remember ever seeing Plant again until I met him at the Touraine with Mr. Winslow on a date that Mr. Winslow fixed as August 16th. I don't know who arranged that meeting. I don't even remember where I got my information to go there, but I must have got it from Mr. Winslow. Mr. Winslow and Mr. Plant were present at that meeting and I think it was a perfectly cordial meeting. I think there was no anger displayed on either side. Mr. Plant either felt or assumed to feel great anger at not having the value of his inventions appreciated, and he talked pretty loud but I don't think he was very angry. No one else was angry.

He said something to me at one time about making the United Shoe Machinery Company look like thirty cents. I think that was the day he took me to drive. Those were not his words but they were something like that. He said that within thirty days he would have the United Company so that it would never pay any dividends on its stock; that he was going to get the Government to help, and that there were other people he was going to get interested to make all the trouble he could, and that he thought I would be very sorry that I had not dealt with him. As to the kind of trouble which he said he was going to make, he said he was going to get the Government started. I think that was all. I think that was a day or so before he filed his plea in the State court. He told me that he was going to file a plea that I probably never had heard of before.

738 During this drive he did not say anything about placing his machines in shoe factories; but he did during one of these conversations say that he would never place his machinery

excepting as a line; that is, he would only place it with a complete line in a factory; that he had talked about placing it, but he didn't intend to do it; he had always held himself in a position where he could trade with the United Shoe Machinery Company, and that was his plan.

Plant did not tell me whether or not he was negotiating with any shoe manufacturers to place his machinery. He didn't say anything about that but he said that he had talked with shoe manufacturers about furnishing shoe machinery to them and I think he mentioned Mr. Endicott.

Plant said that he would get mad every time he talked with Mr. Winslow because Mr. Winslow did not seem to respond very freely.

Q. Now, just about this time, along in June, July, and August, there were a number of advertisements appeared in the newspapers, were there not, of the Plant machinery in Boston?

A. There were advertisements of the opinions of lawyers in regard to the shoe machinery leases; I don't remember advertisements of the Plant machinery. The advertisements attacked the United Company's leases; but they were not advertisements of machinery in the sense of advertisements of anything for sale. In other words, it was more of an attack on the United Company.

Plant showed me a catalogue and said he had either hundreds or thousands of them right in his office that he could put out. I never knew that he did put one out. He told me that he had them to put out.

At the meeting at the Touraine, when Mr. Winslow and Mr. Plant and I were there, the whole of the talk was on the question of the fairness of the proposition that the United should insist upon an examination of the machinery by experts, and in regard to the patent suits. Mr. Plant argued that the examination
739 that had been made by the manufacturers was sufficient, and that Mr. Winslow ought to be willing to make him an offer based upon that examination. That was the examination by Mr. Keith and Mr. Hanan and one of Mr. Endicott's men, who reported at the Algonquin Club meeting—I don't know whether Mr. Endicott was there or not.

Mr. Plant argued that we ought not to bring any patent suits as a result of anything that was found out in the examinations. Then we spoke about the facts that certain patent suits had been prepared, and discussed how he could be safeguarded in case we went forward; about not having any new suits brought that had not already been considered until after a certain time. Then we agreed to prepare a list of the patent suits that we had ready to bring and hand it to his counsel.

I don't remember how many suits had already been brought and I don't think I knew at the time. I don't know anything about the patent side of my office. I think there were about 13 or 14 suits on the list which I made out myself and sent to Mr. Emery.

No understanding was arrived at at the Touraine. I don't remember seeing Mr. Plant again or hearing anything about him or about any meeting that he was in, until I met him at the Puritan Club on September 20th.

I think I had talked with Mr. Winslow in the meantime, and that he had told me that Mr. Endicott had said to him that Plant was willing to sell for a certain figure.

Before that time an examination of the machinery had been made. I don't know how it came about—it may have been arranged at this very meeting at the Touraine, but I don't remember that it was—I should have thought it was arranged at some later time. The examination had been made by some experts of the United Company, who had gone into the machinery with some care. I saw the report which, when I saw it, was in writing, but I am not certain when I saw it. I talked with the men before the Plant purchase and saw some form of report that they had made up. I do not know who made the report.

740 The meeting at the Puritan club was attended by Mr. Carr, Mr. Winslow, and myself. I arranged the place of meeting myself. It must have been Mr. Winslow who suggested it to me. That was the meeting at which Mr. Plant made his proposition to me, which I repeated to Mr. Winslow and Mr. Carr after they came into the room, and which was accepted.

As to whether Mr. Plant was angry at that meeting, he was a little bit angry once or twice during the first part of the meeting. I don't know what he was angry about. As to what he said that caused me to come to the conclusion that he was angry, it was not so much what he said as the way he said it. He said there had been too much delay in examining his machines; that it ought not to have taken so long. He didn't say anything about shoe manufacturers from the West, or that he was considering the proposition with them. He did not mention them. He said nothing about having notes that were coming due in the near future. I think I had known for six months that Mr. Plant was heavily in debt. I never made any inquiry to find out how much he was in debt. The day I went to drive with him he told me that he was in a position to handle all his finances, that he was perfectly well off financially, and could look after his own notes.

I never made any trip to New York for the purpose of ascertaining Plant's indebtedness. As to whether I ever called on

any representative of any trust company or banking concern in New York, a few hours after Mr. Plant had been there trying to negotiate a loan, and said anything to the effect that they better be careful, that Mr. Plant was heavily indebted, I recall a talk with those men, but I never said that. I got a message from Mr. Wiggin, of New York, president of the Chase Bank. I think it came through my brother in New York, who asked me over the telephone when I was going to be there, because Mr. Evans of the North American Insurance Company wished to see me. I have no idea what position Mr. Evans has with the North American. My impression is that he was president, but I never met him. I answered that I was going to be in New York in a few days and would be glad to see Mr. Evans. I had no idea what he wanted to see me for. I rang up Mr. Wiggin and asked him what Mr. Evans wished to see me about, and he said that on that matter he wished I would go to the Central Trust Company and talk with the president, Mr. Wallace.

741

I had worked on several matters that Mr. Wallace had been in, and went down to the Central Trust Company and asked him what he wanted to see me for. I told him that I heard from Mr. Wiggin that Mr. Evans wanted to see me, and then when I got to New York I heard that Mr. Wallace wanted to see me. I had quite a long talk with Mr. Wallace about Plant. From my papers I find that the date was September 1, 1910.

Mr. Wallace started in talking about the other matters on which I had worked with him, and did not mention Plant for a few minutes. Then he said that a large concern which had international banking connections was considering buying into the Plant situation, that he was planning to have an expert and a patent lawyer go to Boston and look into Plant's affairs and see what Plant had, and that if those people put in their money they would be very strong, and of course would do a great deal with this business.

After he had talked that way for about three-quarters of an hour he said that of course he only wished to make so much out of it—he didn't say how much—and if he could make as much by selling to the United Company, he would be as contented to do that as to turn it over to this banking house.

Mr. Wallace did not tell me that he had an interest in Plant's machines, and he did not name the concern. I guess they wanted to sell it before they acquired it, I think. As to how they could sell it before they acquired it unless it was merely as an agent for Plant—well, I think that was their plan. They had no idea of putting any money out.

742 Mr. Wallace said that this was a great opportunity for the United Company to buy the Plant machinery; that Mr. Plant had been to him and that he had made a certain proposition to Plant which Plant had refused to assume, and that he told Plant that if he came back it would cost him more, and so each time he came back. I told Mr. Wallace I was very glad to hear what he had to say and that if he ever wanted to see me again I would talk with him.

There was not a word said at that meeting about Plant's indebtedness. I am very sure that I did not see any other person about that matter during that trip to New York.

743 I made another trip to New York, when I saw Mr. Woodward of the Hanover Bank on some business, and he then told me that he had heard that Mr. Plant owed the City Bank some money and that the City Bank and a hide man, whose name he wouldn't tell me, had some plans for buying Plant's business. Mr. Woodward is a director of the United Company, and he simply spoke to me about this without my speaking to him at all, while I was in the Hanover Bank about other business. These were the only talks I ever remember having in New York about Mr. Plant. I think I did not speak to anyone else in New York about the Plant matter other than Mr. Wallace and Mr. Woodward. Mr. Wiggin simply told me over the telephone that he wished me to see Mr. Wallace instead of Mr. Evans, but he didn't tell me what it was about.

As to whether, when I saw Mr. Wallace, he told me that Mr. Plant had been in there only a few hours before that, he did not. I had only that one conversation with Mr. Wallace about the matter. Neither of us communicated with the other about it afterwards.

Mr. Wallace said that he and this large international banking concern, which had an immense amount of influence, were seriously considering acquiring an interest in the Plant factory. I did not believe him. My reasons for thinking that Mr. Wallace did not mean what he said were, first, I knew Mr. Wallace; then he spoke in a perfectly easy, comfortable way about how he was going to do these things. I was convinced he did not know what he was talking about and that all he had in mind was to see if he couldn't make a turn by getting a bid from the United Company and then dealing with Plant. He almost said so. I left him saying that they were going to send some one over to look at the Plant machines. I think he is president of that bank at the present time.

I did not say that Mr. Plant told me how much he was in debt. I said that he said that he was so fixed that he could look after

himself perfectly well. That was on the day he took me to drive.
I never knew how much he owed and don't know now.

744 The end of the meeting on September 20 was that Mr. Plant made that proposition, and Mr. Winslow said that if his executive committee confirmed him in it, it was done, and that he would get at two of them that night and reach Mr. Barbour as soon as he could over the telephone. That was about ten o'clock at night on the 20th.

At that time I did not know that some western shoe manufacturers were then in Boston, but I did know it within a couple of days afterwards.

On the 21st Mr. Carr and I were discussing a plan of how to work out some of the papers, and Mr. Carr went to Mr. Whipple's office in the afternoon to work on some of the papers. We were waiting to hear from Mr. Barbour. That was all that happened on the 21st.

On the 22d I got word that Mr. Barbour approved and that I was to deliver the five hundred thousand dollars over to Mr. Carr, and I did it.

During my conversation with Mr. Plant he frequently made the statement that if the United Company would not buy him out, they would be sorry for it. He gave me hundreds of reasons for those statements. Sometimes he would say that it was because of the enormous value of his patents and sometimes he would say it was because he was going to attack the United Company. He never said anything to the effect that he was going to put competition into the field. He always said that he had got it up to sell to the United Company.

The suit in the State court which was brought against the Thomas G. Plant Company was to recover back royalties. I could not state without seeing the papers whether it also prayed for an injunction to restrain him from using his own machines.

(Defendants' Exhibit 258 is check No. 73,767, dated September 22, 1910, for $500,000, in favor of Robert F. Herrick.)

745 DECEMBER 16, 1913.

WILLIAM R. SAMPSON, witness for defendants.

I live in Swampscott, Massachusetts, and am employed by the United Company. I am manager of the general department.

I know Frank Merrick and Charles Luitweiler. I remember meeting them some time in 1905 or 1906. That meeting came about in this way:

Mr. B. P. Buck, of the Shawmut Machinery Company, called at my office and showed me a sample of stitching, comprising

several pieces of leather which had been stitched together, and said it was done on a new machine that Merrick had just brought out. Buck was enthusiastic about the quality of the work and said the United Company ought to have the machine. I suggested that he go upstairs and see Mr. C. H. Willson. Buck said he didn't want to see Mr. Willson himself and asked me if I would not make an appointment for Mr. Willson to see Mr. Merrick. Then he said that Merrick had several machines which he wanted to sell, and would like to get employment with the United Company, and would like to meet Mr. Willson and talk it over. I told him that if he would leave the sample I would be glad to show it to Mr. Willson.

Within a few days after that, Buck came into the office and invited me to take a sail down the harbor and lunch at the Hull Yacht Club. I declined, as I am a poor sailor, but he came again within a day or two and urged me to go. I explained that I could not talk with Merrick and Luitweiler with any authority and could not see what would be gained. He said that Merrick wanted to explain the machine to me so that I could explain it better to Mr. Willson. I finally accepted, and following his directions I went to South Boston, where Merrick and Luitweiler met me.

While we were sailing down the harbor Merrick talked about different machines which he had brought out and mentioned particularly the Puritan fairstitch machine. He said he ought to be of value to the United Company.

After lunch we talked for some time on the veranda. 746 They told how much money could be made by selling the machines to the harness trade for $750 each and how much their machine would damage the Campbell machine if they put it out. The Campbell machine was one in which the United Company was interested.

When I was about to leave Mr. Luitweiler asked when he could meet Mr. Willson, saying they were very anxious to meet him and had to make plans, because they were going to make money in other directions if they could not sell to the United Company. I told him I could only report the matter to Mr. Willson, and if there was anything further I would let him know.

I did report this to Mr. Willson, and several days later he told me I could make an appointment for Mr. Merrick and Mr. Luitweiler to meet Mr. Winslow at the Hotel Touraine on a certain day. I was not present at that interview.

I have met Mr. Merrick only once since, and that was at a fair in Mechanics Building where he had a new stitching machine.

The machine which I was discussing with him in 1905 or 1906 was the straight needle machine for harness work.

I did not solicit the meeting with them in any way, nor solicit a meeting for Mr. Winslow with them.

(No cross-examination.)

747

DECEMBER 16, 1913.

ALANSON C. BROWN, witness for defendants.

I live in St. Louis and am engaged in the shoe business. I am president of the Hamilton-Brown Shoe Company. We have seven factories, and we are now making about 25,000 pairs a day. I imagine our company stands fourth among the large manufacturers of the country.

We make all kinds of shoes—men's and women's, children's and boys', and welts, turns, and McKays. We also make standard screw shoes, but no pegged shoes.

Mr. McElroy, who testified for the United States, was in our employ three years ago. Our concern formerly belonged to the Shoe Manufacturers' Alliance, but withdrew from it some time in the winter of 1911. Our reason for withdrawing was that we didn't believe the management of it would make a success and we didn't want to put any more money into it. We understood that Mr. Ballard was going to run it, and he had been a foreman with us, and we didn't consider that he had made a success. He was associated with the other manufacturers that were in the alliance, and I think Mr. McElroy probably was over him.

Practically all the machines in our factories are United Company machines. As to our experience in respect to the supply of improved machines, we think that we have gotten the improved machines without any extra cost to us and that they have benefited us in the saving that we make with the machines; we get out the shoes more rapidly.

The service furnished by the United Company has helped us to educate our workmen and teach them how to run the machines. If a machine breaks down they send a man at any time to repair it or fix it up and keep us running, and they have furnished parts so that we didn't have to keep any supply of parts.

The United Company has instructed a good many operators for us. They instruct operators for us right along without any charge to us. As to the importance of that to us, the operatives struck in five of our factories a little over a year ago and we had to get practically all new operatives in all of those factories. Those operatives were instructed by the United Company's men without charge.

The company also keeps our machines running. If one of the machines should be out of order it would clog up and congest that department until we got the machine running again.

748 As fast as the United Company gets up a new machine which we think is an improvement over the old machine, we try to get them to install it in our factory and take out the old one. They have done this in every case without charge to us, except the freight.

That has resulted in savings to us in the manufacture of our shoes. As to the extent of our savings I know only what Mr. C. E. Ross, our superintendent of the "American Gentleman's" factory, has told me. I had him ascertain what our savings were. We prepared a circular with respect to these facts and sent it out to our salesmen on the road—about 120 men.

The opportunity to lease our machines instead of investing our own capital in them by way of purchase has given us more money to put into other departments of our business. The capital which we invest in the materials which go into shoes we turn over about three times in the course of a year and in the usual course of business we make a profit every time. Our capital is four million and our gross business is around thirteen million a year.

On some machinery that we own we charge off twenty per cent a year for depreciation.

Cross-examination:

I am 31 years old and have been connected with the shoe business since I was fifteen years old. The first thing I did in the factory was to sweep the floor.

I never ran a machine myself and never have repaired a machine. I think I know a welter from a stitcher. I have seen them taken apart and put together. I see machinery operating every day, but I never studied it. I make no pretense at being an expert machinist.

I am the son of the Mr. Brown who has an interest in the business, and Mr. McElroy is my brother-in-law. There are no hard feelings between us. Our seven factories are all in St. Louis, except one that is about 125 miles from St. Louis. Three of the factories are adjoining, on different blocks.

Personally, I have never had anything to do with keeping up the repairs of the machines. When a machine breaks down our superintendent gives notice to the United Company. We pay for the repair parts. I never made an estimate to see what the repair parts cost us and know nothin about that at all.

749 We never undertook to operate one factory or any number of factories upon the system of ~~keeping~~ making our own repairs and keeping our own machines in order. I have no idea whether that could be done more cheaply than the United Company's method.

I think practically all of our machines are obtained from the United Company. Every one of our leased machines and a good part of our general department machines are from the United Company. During my time we have never used anybody else's machines at all. We have had a stapling machine of some kind for fastening soles. I don't remember that we ever used a principal machine that was bought outright. I have no idea what would be the cost of operating a machine for which we had paid in the beginning.

As to whether it is better to buy the machines outright and keep them up ourselves, or to lease them from the United Company, I have an idea but I don't know. We never tried the other system.

The United Company is helping us instruct operators almost daily. We have green help in our factories right along and they send an instructor who helps instruct these operators. During our labor trouble we tried the system of having some teachers ourselves. We didn't have enough instructors from the United Company and had one or two of our foremen try it. As to whether they could instruct all right, it would be a big expense to us if we had to do that. We never adopted a system of keeping our own instructors on hand and instructing new operators as they came in. This United Company system of instructing operators is a good thing all the time. We employ it practically all the time.

I have no idea of the total annual royalty that we pay to the United Company. I know that last month we paid them in the neighborhood of twenty thousand dollars. I should think we paid them something like two hundred thousand dollars a year. I couldn't say positively.

I don't know what it would cost to install our machines under the United Company's unrestricted lease system.

I am in Boston buying shoes for the jobbing house. We both sell and buy shoes. We run a jobbing establishment in connection with the factory. I have a man with me who has charge of that end of the business.

When I am at home in St. Louis I am connected with the running of the factories. Just now, while I am in Boston, I am on the jobbing business.

750 It was in the winter of 1911 that we got out of the Manufacturers' Alliance. We had no trouble with them in any way.

Our company was connected with the gentlemen who undertook to purchase Plant's machinery. My father was representing us in that matter. He was here in Boston, but I don't know whether it was at that time.

Redirect examination:

The reason why we have not attempted to have a repair shop and have our machines kept in repair by our own mechanics is that we have always looked upon the United Company as if they were our machinists, and we did not spend any more money than we had to. We have felt that that arrangement was advantageous for our business.

When I am in St. Louis I am all around in different factories and the store. I am the executive head of the business.

751 DECEMBER 16, 1913.

JOHN H. CONNOR, witness for defendants.

I live in the West Roxbury district, Boston, and I am a vice president of the United Company.

I had several meetings with Charles Luitweiler and Frank Merrick some time in the spring of 1911, as I remember it, at which there was some conversation with reference to some of their properties.

As I remember it, Mr. E. P. Brown told me that he had had some negotiations with Mr. Merrick and Mr. Luitweiler and asked me if I would see them and look into the matter for him.

At the first meeting in my office Mr. Merrick and Mr. Luitweiler told me that they were ready to dispose of all of their machinery business, including a curved needle stitching machine and a straight needle harness sewing machine, which were patented, also a marking machine. I told them that if they had anything covered by patents that was in advance of what we had and would make our machinery more efficient or would be a benefit to our lessees, we were prepared to negotiate. Mr. Merrick also told me that he had a patent on a method of making a shoe which he wanted investigated.

We didn't have much time that day and later on Mr. Luitweiler telephoned me to arrange for further conversation in relation to the matter. He stated that he didn't want to come to our office and invited me to meet them at the Boston Yacht Club, which I did. They then discussed the advantages of their curved needle machine and spoke of the shoe. I told them that at an interview I could not come to any definite con-

clusion as to the value of the machines, that I would have to have the patents on them looked into and would be obliged to see the machines to see how much their patents were embodied in the machines. They invited me over to East Boston, and I examined those machines and, in fact, the whole factory, with them.

During one of these interviews Mr. Merrick said that his price was $750,000. I asked him how he divided it and he said that the straight needle harness machine alone would be $350,000. At that interview I told him I did not see anything that would warrant our purchasing the machines, but arranged for him to send over copies of the patents that had been issued,
752 about a dozen, and they also sent over a shoe made by their patented method. Messrs. Warren and Bresnahan, who had seen their curved needle machine in operation, reported unfavorably on the quality of its work.

Accordingly, I concluded that there was nothing for the company to purchase, and I invited Mr. Merrick and Mr. Luitweiler to the Algonquin Club to meet me and Mr. Brown. There I told Mr. Merrick that I could see nothing of value to our company in his patents.

He told me that he thought that the price $750,000 was very reasonable, as his company would stop more than a million dollars in royalty to our company in the harness trade and in the welting trade. I told him that it never had been and was not then the policy of the United Company to purchase competition pure and simple—that we were only interested in patented machinery that would make our line more efficient. I told him that further than that—or asked him further than that if he knew that the purchase of such competition, or the negotiation for and the purchase of such competition was contrary to law, and jokingly asked him if he wanted to go to jail—said that I didn't want to.

I made an examination of the curved needle machine. One of the principal practical objections to the machine was that the needle was run on the radius of a circle two and a quarter inches in diameter as compared with two inches on our machine. Mr. Merrick told me that as the machine only ran on one side of the diameter, it only made a difference of one-eighth of an inch, but I told him that the difference of one-eighth of an inch was a great deal. In operating on the shank of a shoe the needle strikes the upper and cuts and scrapes it, if it is of a larger diameter. The samples of work that our experts had stitched on the machine showed that they couldn't get into the shank.

For this and other reasons I thought the machine was not practicable.

These meetings which I had with them were very friendly. I don't remember that at any time they said that Mr. Winslow had threatened to drive them out of business. They referred to the company as stopping their business, preventing them from introducing their machinery, but they spoke of nothing of an unpleasant nature that I know of; on the contrary.

I supposed that our negotiations were ended after that meeting, but Mr. Luitweiler later asked me if I would consider taking the agency of the straight needle harness machine for Europe. I told him that we had a eye-needle harness machine over there; but that if his machine, which is a hook-needle machine, was capable of accomplishing work that our machines could not do, we might consider taking the agency.

He said that he would like to talk that matter over and invited me to lunch with him again at the Yacht Club. I then told him that if we could do justice to both our machine and his, I might consider taking the agency. Mr. Merrick then said that if they gave the agency for the harness machine, they would want to give the agency for the curved needle machine for stitching and for welting. I told Mr. Merrick that that would be out of the question, because we didn't consider his welting machine in the same class as ours and we couldn't do
753 justice to both machines. He replied: "That being the case, there is no reason for continuing the negotiations further."

Within a week or ten days after that Mr. Luitweiler telephoned me that a Russian gentlemen was in his office who wished to buy a harness machine. I asked him why he didn't sell a machine to him. He said he didn't want to put one machine out there where they didn't have the parts for the machine and had no one to take care of it, as he thought it might do more harm than good and he asked whether I would like to see the man, thinking that we might sell him some goods. I told him I should be pleased to see this gentleman and he sent a young man with him from East Boston to my office. Accordingly, I considered that my relations with Mr. Merrick and Mr. Luitweiler were at least pleasant.

I believe they have one curved needle machine out, but have never put their machines on the market that I know of.

Cross-examination:

It was in the spring of 1911 that Mr. E. P. Brown asked me to see Merrick and Luitweiler. As I remember it, Mr. Brown told me that they had solicited an interview. I then arranged to

interview them myself—I should say within three or four days. I met them at the Boston Yacht Club at their solicitation, and then I met them again at the Algonquin Club. At both meetings we discussed the harness machine and the curved needle machine. At this time the United Company had a machine for performing identically the same operation as the curved needle machine of the Union Lock Stitch Company, although the United Company's machine was very much better. I saw the Union Lock Stitch machine operate at their factory.

I did not come to a definite conclusion that the United machine was better than their machine until I talked with Mr. Warren, who had seen the machine in operation, and referred to their patents. Mr. Warren told me that our machine was better.

The only other interview after that was that at the Algonquin Club, where I invited them for the purpose of breaking off negotiations. I told them then that I didn't think their machines were as efficient as ours and I saw no reason for the company's purchasing their patents. That was the meeting when we had the conversation about competition. I said that we considered it bad business policy to buy out competitors solely for the purpose of purchasing competitors, and that it had not been and was not the policy of the company to do that. I said that it was not policy to buy them up on the ground that they were a competitor.

754 DECEMBER 16, 1913.

ELMER P. HOWE, witness for defendants, resumed.

Direct examination resumed:

As to the result with respect to the Eppler Company and its business if the Goodyear Company had succeeded in the pending litigation, it is my opinion that the infringing devices were very material in the construction of the Eppler Company's machines, except the welt-sewing machine, and that the litigation would have compelled alterations, especially in their stitcher and auxiliary machines, and would have temporarily put the company out of business. It is of course a matter of speculation whether they could have succeeded in making those alterations and in getting around such decrees as we were likely to obtain.

At the time I was active in the Goodyear Company's affairs I had had practical training and experience with shoe machinery. I began very early in the shoe-machinery business. My father was a manufacturer of cutting dies for cutting soles and different parts of the shoe, and very early I had the run of his factory and and then some duties which took me into the shoe factories in Worcester and the outlying towns. I then acquired a working

knowledge of pegging machines, and later I examined and operated the McKay sewing machine, and subsequently repaired it. A little later, while I was in the Worcester Polytechnic School, during one of my vacations I made the working drawings for the Bigelow heeling machines—heel building, heel compressing and attaching machines, which subsequently went into the McKay Shoe Machinery Company. That was about 1868 or 1869.

In 1873 I was at the Vienna Exposition for five months, and examined particularly the shoe machinery which was exhibited. While I was in college, during one vacation, I testified in an interference suit between the McKay Heeling Machine Association and the Bigelow Heeling Machine Association. While I was studying law I acquired a fair knowledge of B. F. Sturtevant's inventions in the manufacture of pegwood and in pegging machines. Ever since I was admitted to the bar in 1879 I have been actively interested as counsel in shoe machinery, and I think I should have fairly practical knowledge of the sewing machines, stitching machines, and the auxiliary machines of the Goodyear Company.

My connection with the Goodyear Company began about 1879 and continued without a break until it became a part of the United Company. I was familiar with the machines which that company produced and put upon the market, except the very earliest machines made when their headquarters were in New York.

The functions of the auxiliary machines which were marketed by the Goodyear Company in the late 90's just prior to the formation of the United Company were, stated in a general way, as follows:

755 Referring to plaintiffs' Exhibit No. 4 the so-called "full set" lease of the Goodyear Company, a form first got out in July, 1897, the principal machines were the Goodyear welt and turn machine and the Goodyear outsole stitcher; one attachment called a welt bevelling attachment sometimes went with the latter, sometimes not. The insole channeler and the outsole channeler were improvements on the corresponding auxiliary machines which had been in use ever since I had been connected with the company. The company had a rounding and channeling machine, and also a channel lip turner which turned over the lip of the outsole preparatory to stitching. The channel opener opened the channel. The welt beater pounded out the welt after it was stitched on. The shank skiver thinned the shank of the shoe, and the Universal shank skiver was an improved machine for that purpose. The bobbin winder was

merely an accessory of the outsole stitcher. The welt groover and welt splitter were used in preparing the welt before it was attached to the sole, by the welt and turn shoe machine. The Universal inseam trimmer trimmed the surplus upper leather and other stock from the shoe before the outsole was aid. The Goodyear sole layer cemented on the sole before the operation of the outsole stitching machine. The Goodyear automatic sole leveler, which I described in my previous testimony, made the outsole conform to the insole and the bottom of the last, after the operation of the outsole stitcher. The Hadaway stitch separator, which was a very important auxiliary machine, pricked up or separated the stitches on the welt which had been laid there by the outsole stitcher.

All of these auxiliary machines were peculiar in their operations to welt shoes only, except that the stitch separator could be used for pricking up imitation stitches on mock welts or McKay welts. Otherwise these auxiliary machines were every one adapted to making a welt shoe and were of no use on any other kind of shoe.

The Goodyear system ran back to 1870 or 1868. The Eppler Company did not come into the field until late in the 80's. At one time the Goodyear Company had used the Eppler method of laying the chain stitch in a machine for sewing turn shoes, and had abandoned it because of the ridge that it made on the outside of the sole after the shoe was turned. Eppler knew of that abandonment. He had worked for the Goodyear Company for a time. He applied that method to a man's welt shoe with a thick sole, where it could be utilized.

At first Eppler had only the welt machine, which attached the welt to the innersole, and didn't have any machine for attaching the outersole to the welt. At that time when they had only the welt machine the outsoles of shoes operated upon by that machine were attached by a straight needle stitching machine, such as is used in harness work, or were sewed by hand.

756 Of the Goodyear auxiliary machines, the insole channeler and welt groover and welt beveler preceded the operation of the welt and turn shoe machine; before the operation of the outsole stitcher came the Universal rounding and channeling machine, the lip turner, the channel opener, the inseam trimmer, and the sole layer; the automatic sole leveler and the Hadaway stitch separator operated after the outsole stitcher. These machines performed consecutive operations in manufacturing the shoe. One or two of them were alternates.

The Goodyear Company had a registered trade-mark, the name "Goodyear Welt." We gave our lessees the privilege of

using that trade-mark, and tried to have them stamp it on a conspicuous part of the shoe.

Prior to the development of the Goodyear system there was no system for making welt shoes by machinery. Welt shoes were made by hand in the very early days, and down to 1899. The Goodyear system was the first for making welted shoes by machines, which imitated the exact process by which a hand workman made a welted shoe.

The Goodyear auxiliary machines were put out by the Goodyear Company on a lease substantially like plaintiff's Exhibit 4, and the lessee expressly agreed that he would not use or permit the use of the machines or any of them upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the lessor was employed, or for any other purpose than the making of Goodyear welts, unless the consent in writing of the lessor should have first been obtained. In addition to the initial premium charge for the principal machines, an initial premium was required for the auxiliary machines, depending upon the size of the respective machines.

As to the business reason for the provisions of the sixth clause of the lease of plaintiffs' Exhibit No. 4, the machines were designed in succession especially for the manufacture of shoes that had been or were to be sewed and stitched by our principal machines, and as they were especially designed for use in connection with those machines we wanted to keep them there for that purpose, and therefore we restricted it.

We did not receive any royalty for the use of the auxiliary machines, independent of the royalty received for the
757 principal machines. The royalty was measured on the two principal machines, and there was no way of telling to what extent the auxiliary machines were used. If the auxiliary machines were used in violation of the sixth clause, and we found it out, we got the same royalty for the use of one of the auxiliary machines that we would for two principal machines; but we probably did not find it out in a good many cases.

The Ideal lasting machine was developed from the Copeland rapid laster. The Goodyear Company acquired a substantial interest in the Copeland Rapid Laster Manufacturing Company, which I think started about 1892 or 1893. When the Ideal laster was developed, particularly for use on women's welts, the Goodyear Company acquired the entire interest in the Copeland Company and subsequently leased the Ideal laster as an auxiliary to its welt and turn machine and its outsole stitcher.

The Ideal laster was adapted to work on women's welts, light leather, which no machine in the market at that time would do

successfully. It might as a feat be used on men's welts, particularly if they were made of thin leather. But the machine was designed and almost wholly used for lasting women's welts.

I was familiar with the fields of the different types of lasting machines used in 1899. The McKay & Copeland machine was the first successful lasting machine that I knew of. That was adapted only to heavy work like brogans.

The Consolidated hand method machine was adapted principally for lasting McKay sewed, and standard screwed or pegged shoes that were lighter than those on which the McKay & Copeland machine was used.

The Chase machine was designed for and used almost exclusively on men's welts.

Q. Now, did those four types of lasting machines practically and commercially overlap or duplicate each other, or did each have its appropriate and proper field?

A. Each had its separate field for which it was designed, but in the cases of all machines of a genus the specific varieties will overlap. It is the same in the case of automobiles. There is a line between a runabout and a seven-seated touring car, and on each side of that line you could use either machine, but the runabout is not adapted for a truck and a truck is not adapted for a runabout strictly.

Q. You mean that commercially each had a fairly defined field?

A. A fairly well defined field. It would happen sometimes in a shoe factory whose principal work was the manufacture of women's welts that the concern might be making a few McKay sewed shoes, but not enough to have an appropriate lasting machine for them. In that case frequently they would strain a point and last their McKay shoes on an Ideal laster, for which it really was not adapted.

I was familiar only in a general way with the business
758 of the McKay Shoe Machinery Company prior to 1899. I
knew what class of machines they were putting out and that they were leasing them, first with an initial premium and royalty charge. I knew that subsequently they had abandoned the practice of asking an initial premium in the metallic department, and later I knew that they had been putting out no leases at all for metallic machines, waiting to determine what policy they could afford to take with their machines.

The universal practice of all three constituent companies prior to 1899 was to lease their machines.

The preliminary discussions in connection with the formation of the United Company were wholly conducted by Mr. Winslow

and myself. Mr. Brooks and his company had no part whatever in those conferences.

The directors of the Goodyear Company, excepting myself, were in New York and its vicinity, and the directors' meetings were held there. There were no officers of the company in Boston except the treasurer and general manager and myself, and I had accepted for administrative reasons the position of vice president. I was still practising law, and I did not desire to continue as an administrative officer of the company. I wanted to get out.

The McKay Company desired to sell its Winchester factory, and before the Goodyear factory was built on Albany Street Mr. Brooks had several talks with me about acquiring the Winchester factory, which for some reasons was thought to be unsuitable for their purposes. They wanted to go back to Lawrence, where they had previously manufactured their machines.

Q. Will you state the substance and result of these conferences that you had with Mr. Winslow which ended in the formation of the United Company?

A. Well, we had many conferences, all of them, I think, in my office, and they related entirely—of course, I can't pretend to give the language—they related entirely to the economies which we could get if the two complementary machines were handled by the same company—the economies, first, in the administration of the two companies; the economies due to manufacturing the machines themselves and the parts and the auxiliary machines in one factory where we could get a modern up-to-date factory; the economies that could be attained by consolidating our service. The Goodyear at that time had the best branch offices where stocks of parts were kept, where expert operators were on hand every day to answer telephone calls and go out to repair the machines. The Lasting Machine Company had similar agencies connected with shoe finding concerns in Brockton, in Cincinnati, in Philadelphia, and in Chicago, but their service was nothing like as good as the Goodyears. On the other hand, the Goodyear for the volume of business it did was furnishing service at too great expense, and I thought, particularly—and I think Mr. Winslow concurred with me—that if we could in some way bring about a harmonious arrangement between the Lasting Machine Company and the Goodyear Company we could make a great saving and
759 give the service with greater efficiency in all the branch offices and also, as I have said, in the manufacture of machines and the running of a factory. Proportionately to the

amount of business done there would be less overhead charges. Furthermore, as I said, I wanted to get out of the shoe machinery business, and I knew from my acquaintance with Mr. Winslow and Mr. Brown, who could give their whole time to it, that a far better and more efficient management could be secured than with a lawyer running the company, and with his directors in New York City.

Mr. Winslow and Mr. Brown were well known as efficient managers for the Lasting Machine Company, and Mr. Brown had been known as district manager for the Wheeler & Wilson Company.

Q. Was there any competition between your Ideal machine and your Chase machine, or any other lasting machines?

A. Whatever competition there was was due to their respective fields lapping over.

Q. They really occupied separate fields?

A. They really occupied separate fields. It was competition which might be described as incidental or as negligible.

My conferences with Mr. Winslow began about July, 1898, and continued as we both had time for them. I was opposed to the plan of having a harmonious arrangement, a sort of working agreement between the Lasting Machine Company and the Goodyear Company, because I had a sort of indefinite idea that it might be deemed to be a combination in restraint of trade.

About December Mr. Barbour and Mr. Hanan, Goodyear directors, and I met Mr. Winslow and Mr. Brown, and got started on the way to form the United Company. Some time in January, 1899, the same parties met in New York and agreed verbally what to do.

A large element throughout the discussions was to determine the value of the two companies—what they were really worth. That required an exhaustive examination of the books, the business, and the patents of each company.

At the meeting in January it was agreed that a company should be formed and should take over such stock of the Goodyear and the Lasting Machine Companies as we could get, and that certain stock of the new company should be allotted to each share of the two constituent companies, respectively. The name, the amount of the capital stock, its division into preferred and common stock, and the terms of the preference were then decided upon.

There was no established market value for the shares of the two companies at that time, as but few shares were being sold, but the book values, so far as could be judged, were far in

excess of the prices which the United Company paid for the stocks.

760 By my previous reference to something being in restraint of trade I meant that I had an indefinite fear that if the two companies remained separate but, for instance, had a joint factory and joint branch offices, there might be something in the way of restraint of trade. I insisted for that reason that there should be a complete merger and consolidation.

No agreements whatever were entered into either between the Goodyear and the Consolidated Companies, or between any of the individuals connected with them, with reference to limiting or restraining their action or activities.

None of the Goodyear directors controlled or had anything like the majority of the Goodyear stock. I had three shares. All we agreed to do was to put in our own stock, and then use our influence with the other stockholders to come in. Mr. Winslow and his associates adopted the same policy.

I drew the circular letter to the stockholders of the Goodyear Company, which is plaintiff's Exhibit 152. As to what I had in mind in making the statement in the first sentence in that circular, when this circular was issued we had acquired the Eppler Welt Machine Company, and we had acquired the directors' stock of the McKay Shoe Machinery Company and expected to acquire a large majority of their stock. Therefore we then had the most efficient types of shoe machinery—perhaps I should have said protected by patents—in that we had the Goodyear welt and turn sewing machines and a long line of auxiliaries, which were the only system or set of machines which would make the Goodyear welts, the best and most suitable shoe for any gentleman or lady to wear that was then known; we had the best heeling machines, best metallic fastening machines, all protected by patents; we had the best lasting machines. If any manufacturer wanted to make Eppler welts, we had the only system that would make them. Therefore that seemed to my mind at that time—the United Shoe Machinery Company did—to represent the control in one corporation of the most efficient types of shoe machinery.

By Eppler welts I mean welts made by the Eppler welt machine, which laid the chain of the stitch in the channel of the shoe, thereby differing from the Goodyear welt. Those two types of shoes were well known in the trade. There was the Goodyear welt, made by the Goodyear welt machines; the Eppler welt, which was a recognized class of shoe. We didn't know whether the manufacturers would prefer, if there were no litiga-

tion at all between the two companies—whether the trade would prefer Eppler welts or whether they would prefer Goodyear welts.

Then we left out the McKay sewing machines—we had no manufacturer of those at all—which made McKay sewed shoes, and couldn't get the control in one corporation of McKay sewing machines because the patents had expired on them and they were for sale in every findings store and machinery store.

The Eppler Company had a few auxiliary machines. They necessarily had a channeling machine; they had a rough rounder and channeler which the Goodyear Company considered an infringement. They were also endeavoring to perfect a stitch separator. That infringed the patents on the Goodyear
761 stitch separator, and in my opinion was not as good as that machine.

As to what I had in mind by the statement in that circular, plaintiff's Exhibit 152, "The United Company will also from time to time acquire other shoe machinery properties," I foresaw that this United Shoe Machinery Company was either going to be a success or a failure. It could not stand still. It would soon find out, as I foresaw, that it could take on new businesses which would supplement the business of the three original concerns. I knew no better ones, no more efficient machines, than were manufactured by the three constituent companies, including the Eppler as a fourth, of their kinds. Now, I said, "There is no reason why we should not in all probability go into some other fields that will enable us to do our business more economically and to largely increase our volume of business."

Q. Did you or your associates, so far as you knew, at that time intend to acquire complete control of the business of manufacturing or selling or leasing shoe machinery and to exclude all others therefrom?

A. We did not. The only intention we had was to continue the business we were then conducting in connection with the business of the Lasting Machine Company and the McKay Shoe Machinery Company. We had no plans looking ahead other than that I had in my mind, as I have said, that this company, if it was a success, could not help developing into other lines.

Q. And was there any discussion, when you and he were talking about the United Company, of obtaining control of the entire field of shoe machinery?

A. No; none whatever.

In the last part of the circular of plaintiff's Exhibit 152 I set out the only things that, so far as I know, were considered by

the promoters of the United Company, or by the directors of the Goodyear Company:

"The undersigned, being all the directors of the Goodyear Shoe Machinery Company, believe that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of the increase in business, economies in administration, and decrease in expenses, and cessation of the litigation between the companies, which has been expensive to them and annoying to shoe manufacturers. They believe that these results can be attained without increase of cost to users of machinery made by the company, and that better attention to the care of machines and assistance to the users can be afforded."

There had been a great deal of litigation between the Goodyear Company and the Lasting Machine Company, particularly between the McKay & Copeland Company as plaintiffs and the Copeland Rapid Laster and Goodyear Companies and various shoe manufacturers who were sued for infringement by reason of using our lasting machines, the Ideal and the Copeland rapid laster, as defendants. Many suits were brought by the McKay & Copeland Company on one patent on a very material part of our machine. One of those suits was tried, the others abiding the result, and the Circuit Court of Appeals held that we infringed. The Copeland Company tried to avoid the patent, and in a new suit, which was really in the nature of contempt, it was held that we were infringing, but we were given six weeks
762 to alter our machines, and by that time the patent had expired. That was patent No. 197,607, dated November 27, 1877. That suit was pending on an accounting at the time the United Company was formed.

There were other suits brought by the McKay & Copeland Company, which were pending in 1899 and which never went to trial, and still another set of suits, brought by plaintiffs representing interests held by the Lasting Machine Company against users of Ideal lasting machines, were pending when the United Company was formed. There were other suits of which I will not give details, but in general there was a lot of litigation between the two companies, in which one company at times was the plaintiff and at other times the defendant, and those suits were in almost all cases against customers of one company or the other.

I found that a corporation as large as the United Company could not be incorporated under the laws of Maine or of Massachusetts, as those laws then stood, without a special act of the

legislature of either State. At that time of year it was not practicable to get such an act passed, and it was decided to organize under the general laws of the State of New Jersey.

The charter was granted for the United Company on February 7th. Within a few days before or after that Mr. Barbour, Mr. Hanan, and Mr. Winslow found that the entire stock of the Eppler Company could be purchased for cash. They raised the money and created the so-called syndicate that furnished the funds for the formation of the United Company. They bought the entire stock of the Eppler Company and turned it over to the United Company at exactly what they paid for it, taking their pay in equal proportions of preferred and of common stock. The Eppler Company was acquired because it operated another machine for making a different class of shoes; also, and principally, because there was a great amount of litigation between the Goodyear Company and the Eppler Company and users of Eppler machines, as I have testified.

We wanted to start free from litigation because, for instance, in suing one defendant, the George E. Keith Company, of Brockton, if the Eppler Company had not been bought the United Shoe Machinery Company would have felt obliged to prosecute those infringement suits against George E. Keith, who were the users of the metallic machines and the users of lasting machines, and it would have been collecting rentals and royalties for one set of machines and suing them on another. It made very unpleasant relations.

The idea of acquiring the McKay Shoe Machinery Company was because it seemed to us that it would be a very important factor in the United Company, and because if their agencies could be consolidated with the branch offices of the Goodyear Company there would be a saving of expense and to some extent an avoidance of duplication of administrative men and of experts. The three principal companies did business in every shoe factory of importance in the country.

763 When we determined on that Mr. Winslow and I went to see Mr. James J. Storrow, who was counsel and one of the directors of the McKay Company, and told him the facts about the United Company, and asked him whether the McKay Company directors would be interested to come in. Mr. Storrow consulted with Mr. Brooks and some of his other directors, and we had several interviews with them. We offered nine dollars a share, and they succeeded in showing that their business and prospects were worth eleven dollars a share, and accordingly the United Company offered them that amount.

The United Company then held a formal meeting of organization and directors were chosen from the representatives of the three companies, and directly after that the circular of plaintiff's Exhibit 152 was sent out to the Goodyear stockholders.

Mr. Brooks declined to be a director in the new company, and ceased all active connection with shoe machinery business from that day. I became a director and a member of the executive committee, and served in those two positions until this suit was brought.

Instead of any of the businesses which came into the United Company being suppressed, on the contrary they were increased. All the machines which were being made by the respective companies prior to 1899 were continued and were manufactured, or were manufactured with improvements added to them, and were offered to lessees on the same terms as they had been offered by the constituent companies, and that has been true to the present time.

Q. The United States charges you with having conceived the idea of acquiring a complete monopoly of the manufacture, sale, and lease of machinery to destroy existing competition, and to exclude all others from the trade, and that you conceived the idea of accomplishing that by obtaining control of all the concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then refusing to sell or lease any of the essential machines except upon condition that a man who took one of your machines should take all the others. Was there any such agreement, purpose, conception, or intent?

A. We did not determine to acquire a complete monopoly in the manufacture, sale, and lease of shoe machinery, but so far as I know had no intention other than to continue the business which the three or four constituent companies had. It so happened that those were complete monopolies because their machines were all patented. I don't see how, as is charged here, we intended any suppression of competition, because there was no lawful competition in the business of those four companies, couldn't have been. We didn't need any unlawful combination to exclude all other from trade and commerce in Goodyear machines and lasting machines and McKay shoe machines and Eppler machines, because, as I say, they were each and all of them monopolies.

Q. You mean in the sense of their being patent monolies?

764 A. They were complete patent monopolies. No one could lawfully compete with them. There was no idea or no conception, to my knowledge, certainly I hadn't any, and it

was never discussed, to acquire the ownership or control of all concerns engaged in the manufacture and dealing in any and all kinds of shoe machinery, and certainly there was no discussion, no intent, that was apparent on the part of anyone with regard to changing the methods of selling and leasing machines which the constituent companies were then pursuing.

There was no intent and no discussion relating in any way to changing existing leases, changing from one form of marketing to another. The United Company pursued identically the same methods of putting out machines that the constituent companies had pursued and were pursuing in January, 1899.

In the earlier years I had a good deal to do with the developments of the leases and I am familiar with the metallic situation in 1900 and 1901. I knew that copper had been increasing in cost and that consequently wire and nails, which are largely made out of copper, had gone up in price during the fall of 1898 and in 1899 and 1900.

I took part in the negotiations between the United Company and the New England Manufacturers' Association with reference to the metallic lease. The New England association, which first took up the metallic leases with our executive committee, had for counsel Mr. Goddard, Mr. Moorfield Storey, and Mr. Richard Olney. Subsequently, while those negotiations were continuing, the committee from the National Association of Manufacturers joined the New England committee and did not take any additional counsel. Our negotiations were almost wholly with one or two of the manufacturers on the committees and with Mr. Storey and Mr. Goddard.

In July, 1900, the United Company brought out a new lease, plaintiff's Exhibit 30, for the metallic department with which the manufacturers expressed much dissatisfaction because the majority of them had been without leases for a year or more and they objected to the terms of that lease. As a result these committees were appointed and these negotiations were had. The conferences extended over two months and finally the form of lease of plaintiff's Exhibit 31, known as the independent lease of the metallic department, was agreed upon as satisfactory in every respect to the manufacturers. That left them free to use any machines they wanted to in connection with the metallic machines, and they were only required to pay ten per cent more for the metallic material which they used in the machines than the lessees under the restricted leases paid.

765 Mr. CHOATE. I offer the letter from Mr. Howe to Mr. Moorfield Storey, dated January 16, 1901:

DEFENDANTS' EXHIBIT 259.

BOSTON, *January 16, 1901.*

MOORFIELD STOREY, Esq.

DEAR SIR: I have reported to the executive committee of the United Shoe Machinery Company that, as a result of the conferences between the committee representing the shoe manufacturers on the one side and the president of the United Shoe Machinery Company on the other side, and as the outcome of our meeting to-day as counsel for the respective interests, a form of lease of the United Company's metallic department machinery, for those lessees who wish a lease to use such machinery independently of the lasting machinery and sole sewing machinery leased by the United Company, has been agreed to. This form of lease may be called for convenience of reference the "Independent" lease.

In order that the present and prospective lessees of the United Company may clearly understand the differences between this Independent lease and the lease of metallic department machinery at present in use by the United Company (which I will call the "United" lease) a reasonable time should be afforded for each lessee to judge which form is best for his interest. The "Independent" lease by its terms can be exchanged for a "United" lease at any time, when the lessee is not in default, on written notice to the lessor, and the United Company now proposes, if the committee whom you represent so approve and recommend to its constituents, to allow any lessee who has signed, or who shall forthwith on request sign, a "United" lease, the right, at any time before February 1st, 1902, if he is not in default, to surrender such "United" lease by accepting and executing an "Independent" lease of the same metallic department machinery. At our interview to-day you suggested that a period of two years should be allowed for lessees who sign the "United" leases to exchange them for "Independent" leases. It has been assumed by the executive committee of the United Company, until I reported your suggestion to them, that three months would give sufficient time for a lessee to make up his mind which form of lease he wished to take, but in view of your suggestion, and with the desire to meet the wishes of the shoe manufacturers as nearly as is practicable, it has been decided, if recommended by your committee, that such exchange may be made at any time within one year, that is, on or before February 1, 1902, which would

seem to afford the most doubtful lessee ample opportunity to acquire information and decide whether it is for his interest to retain the "United" lease.

The proposed "Independent" lease and the privilege, until February 1, 1902, to those lessees, who have signed or shall sign "United" leases to exchange them for "Independent" leases, are submitted upon the understanding that the committee whom you represent are satisfied with and will recommend the same, and that they appreciate and will report that the officers of the United Company have given careful consideration to all the requests and suggestions of the committee, and have manifested a sincere desire to accede to the same, so far as consistent with the policy of the company toward those lessees who wish to use its machinery in all departments of their respective factories.

Very truly, yours,

ELMER P. HOWE.

The original of the above letter was delivered to Mr. Storey this day upon his assurance that he would recommend the Independent lease and the foregoing offer of the United Company for approval and acceptance by his clients, and that if his clients—the committee—do not endorse and recommend the same to the N. E. Ass'n the proposition and this letter shall be withdrawn.

E. P. H. Jan. 16/01.

766 The WITNESS. I received from Mr. Storey in reply the letter of defendants' Exhibit 260.

DEFENDANTS' EXHIBIT 260.

BOSTON, *21st January, 1901.*

ELMER P. HOWE, Esq., *53 State Street, Boston, Mass.*

DEAR SIR: I hand you herewith the draft of the Independent lease which you enclosed in your letter of the 16th. The provisions of the 7th article as it seems to me are not in entire accord with our understanding and the point escaped my notice at our previous conferences. According to the structure of the Independent lease the agreements which are contained in ss. 1, 2, 3, 4, and 5 are styled conditions, those in 6 are called agreements. Article 7 provides that "if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor or the lessee, whether as a result of the assignment to the lessor or otherwise and expressed to be ob-

ligatory on the lessee, etc." You will observe that this makes the rights of the lessee depend not merely on the provisions of this lease but on the provisions of every other lease that he holds. I have had before me leases in a great variety of forms and in some of them things which you call agreements in the Independent lease may be called conditions, and a violation therefore of something that neither of us have in mind may give your company the right to terminate every lease which the lessee holds. I do not think this was contemplated. I said that my committee was content if the lessee did not keep the conditions of this lease, that he should lose this lease and all his other leases, but I think you will see that your clause 7 goes further. I would suggest the elimination of the words which I have enclosed in pencil brackets in clause 7, being the words which begin "or contained in any other lease" and end with "upon the lessee." To this I fancy there can be no objection.

The committee have carefully considered the lease and desire only a slight variation. They would like the privilege of changing from the iron-clad lease to this lease for two years, that is to say until the 1st of February, 1903, and they would like also some guaranty or assurance that the modified lease will continue to be offered to the trade for say five years. If these concessions are made they will recommend the lease to the trade.

I think that there is no very substantial difference between these requests and what you have been willing to concede. It was the purpose of your company as you told me to continue to offer the modified lease for an indefinite time and if this is so five years is not very long time to fix. And as I told you at our discussion, I think the difference between giving the right to change for one year and for two years for you cannot be very material while I think it will make your relations with the trade cordial and enable you to begin business with the feeling that the difficulties between you have been ended. I trust that your committee will adopt this view and thus bring these discussions to a mutually satisfactory end.

A single further suggestion. Mr. Goddard has suggested, and I think very properly, that clause 6 would be improved if the words in the last line but one "covering the term of five years" are inserted after the word agreement as has been done in the copy which I send. This is merely a description and makes a little more certain what we are referring to.

Yours, very truly,

MOORFIELD STOREY.

767 The WITNESS. I replied to that letter under date of January 22d and defendants' Exhibit 261 is a copy of my letter.

DEFENDANTS' EXHIBIT 261.

JANUARY 22, 1901.

MOORFIELD STOREY, Esq.

DEAR SIR: I have your letter of this date with which you return the "Independent" lease I submitted to you on the 16th instant. The terms of this lease were settled, as you will remember, after an extended conference on the 14th instant, between your committee and Mr. Winslow, at which both you and Mr. Goddard were present, when, as Mr. Winslow and I supposed, all the clauses in the lease which were in dispute, and the letter, dated January 2nd, 1901, from the committee to the company, referring to such clauses, were discussed, and an agreement reached as to what changes in the lease should be made, except that no definite right was accorded to a lessee under the present United lease of metallic department machinery to change it for an Independent lease of the same. At our interview on the 15th instant we settled upon the phraseology to express the conclusions reached at the conference on the 14th, and we then agreed that the only question left open for discussion was what length of time should reasonably be given by the company to its present and prospective lessees of metallic department machinery to decide whether to take and retain the United leases, and that was the only question to be considered when Mr. Storrow was called in. Consequently, immediately after our interview on the 15th, I reported to the executive committee of the United Shoe Machinery Company that the Independent lease met your approval, but that you suggested that a period of two years should be allowed for lessees who sign the United lease to exchange them for Independent leases, and I assured our executive committee that, if your suggestion could be adopted, the Independent lease would be recommended by your committee. I therefore urged our executive committee to concede a longer period for such exchange of leases than they had intended to offer, and longer than they deemed necessary for any lessee to judge of the relative advantages or disadvantages of the two leases. On my assurance that the Independent lease met your approval, and would be undoubtedly approved by your clients, inasmuch as substantially all the changes suggested by them in their letter of the 2nd instant had been incorporated in it, our executive committee finally authorized me to propose that one year from February 1st next should be allowed for such change of leases.

I am therefore disappointed that, in your letter of to-day, the discussion is not confined to the length of time to be afforded for such exchange of leases; and that other points, which have been debated at length and disposed of, are revived. The company is unwilling to reopen these questions, and declines to accede to the changes suggested in your letter, except that the insertion of the words "covering the term of five years" in article six, is unobjectionable.

The executive committee have reconsidered the request of your committee that the period for exchange from the United to the Independent lease be extended to February 1, 1903; but for the reasons given in my letter to you of the 16th instant, they adhere to their decision that one year will afford ample time to the trade for the purpose, especially as it should be kept in mind that a lessee by taking an Independent lease can have the entire term of seventeen years to decide whether he wishes to avail of the lower royalty afforded by the United lease.

The company has been, and will be at all times desirous of continuing the cordial relations with its lessees which have hitherto been maintained, and to that end its executive officers have carefully considered and have endeavored to accede to all the requests and suggestions made by your committee during the past three months, so far as is consistent with carrying on the business of the company on a basis which shall insure not only a safe investment for its stockholders, with fair returns thereon, but also, what is equally important to it, the welfare and prosperity of the shoe manufacturers.

Yours, very truly,

ELMER P. HOWE.

768 (Examination of Mr. Howe suspended at request of counsel for defendants.)

DECEMBER 17, 1913.

ROBERT P. HAZZARD, witness for defendants.

I live at Gardiner, Maine, and my business is the manufacture of shoes. I have been engaged in that business for 27 years. I began in the employ of my father and uncle, Parks & Hazzard, at Jamestown, New York. In 1895 I went to Brockton, Massachusetts, and was a member of the Field-Hazzard Company for about seven years. I then became superintendent of the Maine factories of the Commonwealth Shoe & Leather Company, of which Mr. Charles H. Jones is president, which are located at Gardiner and Skowhegan, Maine. I was with them from September, 1902, to the spring of 1906.

I was interested in the Parks & Hazzard Company and in the Field-Hazzard Company, but I was only in the employ of the Commonwealth Company.

I next became interested in the Snow-Hazzard Company of Gardiner, which was formed in the spring of 1906. They manufactured men's Goodyear welts. December 23, 1909, I bought out Mr. Snow's interest, and I am now the majority stockholder of the R. P. Hazzard Company, which took control of that business on March 1, 1910. We have one factory, and in 1913 our output is about 5,000 pairs a day, all men's Goodyear welts. Our business has increased from approximately a thousand pairs in 1910.

I have been familiar with the manufacture of welt shoes by machinery for approximately twenty years. I have operated shoe machinery and have worked as foreman, superintendent, owner and manager, and general utility man.

Before the United Company was organized I was familiar with the Chase, the Consolidated hand method, and the McKay & Copeland lasting machines. The McKay & Copeland was used for lasting miners' brogans. The Chase machine was used on welt shoes and the Consolidated hand method machine was used in making McKay shoes. Each machine had its appropriate field and they were not used interchangeably on different kinds of shoes. The Consolidated machine of later years we have used some for side lasting welt work.

When the Snow-Hazzard Company started we got from the United Company all the machinery that they could supply us with. The total number of machines now in our factory is 746, and 327 of those were obtained from the United Company either by lease or purchase, something less than 50 per cent. About 31 of those machines came from the General Department and may be purchased if desired, so that 296 machines are held by us on lease. I have watched the development of the machines which we lease from the United Company.

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When I started in for myself I adopted the plan of obtaining machines on the restricted leases because I considered it to our advantage to do so.

Because in my judgment it was a necessity for the United Shoe Machinery Company to restrict in some way the use of those machines in connection with the machines paying a royalty, in order to make it practical for them to supply us with the agents' service which they give us, and that the saving in the machinery investment in our plant and the chances of new models coming up made the purchase of the machines in this manner better for

us in a financial way as regards the investment of the machine, besides the advantage of the agents' services.

The capital of the Snow-Hazzard Company was $50,000. We now turn over our capital about eight times. Our investment as shown by our last audit is a little over $300,000 and during the past year we have done a business of approximately two millions and a half. We have gone on the plan of making as small a permanent investment in machinery as was possible and putting all our money into the active running of the business.

I might add right there that when the Snow-Hazzard Company was started as a $50,000 corporation, had we been obliged to have bought by outright purchase the machinery necessary to have equipped that plant, that it would have taken such a large part of our capital that our credit would not have been such as to enable us to have purchased our merchandise and conduct our business and allow us to grow as it has. The unfortunate part of the shoe business is that whenever you take a statement into the man that is giving you financial assistance the first thing he does is to take a lead pencil and draw it through the machinery, so whenever you put a dollar into machinery, why, you might as well kiss it goodby. To get credit you have absolutely got to have liquid assets.

The machines from the different departments of the United Company are interspersed in their operations. The first thing in making the shoe is to prepare the bottom stock. In that we have to use auxiliary machines of the Goodyear department and also some of the general department machines. We next use the assembling machine and pulling over machine, from the pulling over department, and the No. 5 lasting machine from the lasting department, etc. At the same point we use the machine for tacking inner soles from the metallic department. We next employ machines for trimming the uppers, pulling the tacks, and welting the shoe from the Goodyear depart-
770 ment, and then the auxiliary Goodyear machines for sole laying, etc. The heel seat nailing is done by a metallic department machine, and then we come to the Goodyear stitchers and more Goodyear auxiliary machines. Then the heeling machines of the metallic department are used, and then we swing back to the slugging machines of the metallic department. From there out we go back to the general department machines, edge trimmers, edge setters, etc. The operations of the machines from the different departments are all interwoven and the machines of one department are interspersed among the operations of the machines of the other departments.

The United Company has so perfected the machines of its different departments that hand work of itself has almost become obsolete. Practically every machine takes up the shoe where the preceding machine left it, and there are very few places to-day in the bottoming room where any labor is necessary between the operations of the United Company machines. Practically speaking, each machine prepares the shoe for the operation of the next; for example, when a shoe leaves the No. 5 lasting machine there are tacks in it to hold the upper in lasted position, and those tacks must be removed before the inseam can be trimmed. Then they come in with their tack-pulling machine which pulls out the tacks, leaving the shoe in condition so that the inseam trimmer can trim the upper, which it could not do if the tacks were there. So you go on indefinitely; it is just a continuous process.

The United Company's service is one of the greatest necessities for the economical running of a modern shoe factory. That service consists of men who specialize on certain classes of machines and who are located conveniently to the manufacturing centers. We are served to a certain extent from the Auburn, Maine, office, but there are several resident United Company shoe men in Gardiner who are under the jurisdiction of the Auburn office, but who are located in Gardiner so as to be more available when we need them. If those men are busy at one of the other factories or if there is anything that they can not handle, we telephone Auburn and inside of an hour and a half we have a man from Auburn. Those men do anything that seems desirable in putting the machines in shape to do the maximum amount of work of good quality.

771 The Reece Buttonhole Machine Company supplies what they call service but it is not the same kind of service that the United Company furnishes. The failure of a company to give efficient service is detrimental both to one's nervous system and to the smooth running of the factory.

As to the importance of efficient service, the shoe business is peculiar because it is dependent on succeeding operations, because the lasts are in the shoes while they are being made and because an even production in all operations all the time is absolutely necessary for efficiency. That efficiency wants intelligent action and it wants it quick, and may be compared to the fire department in case of fire.

When manufacturers get that service it not only means bigger wages for the employees, but it means better results for the manufacturer and cheaper shoes for the consumer. In my

judgment, with the United States Company's service the consumer is buying shoes cheaper than he could if the royalty were done away with and efficient service were not furnished.

The time that a shoe is on the last varies according to the grade of work. We figure five days. Our investment in lasts is probably between fifty and sixty thousand dollars. The money invested in lasts is very important to the shoe manufacturers and it is an absolute necessity to get the lasts free for the next lot of shoes. If the lasts are tied up longer than they should be it means just that much loss of production.

If for any reason certain machines in any department are broken down and can not be used, that department is handicapped to the extent of the production of that machine. That stops us from earning money, and it not only stops the operator of that individual machine but it has more or less bearing upon hundreds of other operators that are dependent upon his work. We don't allow operators to have a large accumulation of shoes on any operation because that would tie up too much money in lasts and stock, and we would not have room to make the shoes; so that every man is working right from rack to rack to the man ahead of him. These shoes are moved in racks of 24 pairs, and when one machine shuts down it is like breaking a link in a chain. The men behind are constantly sending ~~their~~ their racks along and they are getting stalled at the broken machine.

772 In any manufacturing business it is always desirable to keep the equipment as nearly up to date as possible, and it is desirable to accomplish that with the least exertion and the least expense.

We depreciate the machinery which we own 20 per cent per year. There is no question as to machinery getting out of date. Probably there is very little machinery in an established industry which has been developed faster in the past decade than the machines of the United Company.

Formerly we had the worst kind of competition in shoe manufacturing from the man that ignored the expense of machinery maintenance in figuring, and the tendency of everybody was to meet that competition by not keeping their machinery up to date. The result was disastrous to the operator, the manufacturer, and the consumer. At present all the machinery can be kept up to date at comparatively nominal expense in dealing with the United Company.

When we have an old machine and desire to get a new model, a stitcher for example, we turn in the old machine and we pay

the United Company's special price, together with the cost of the missing parts. On the stitcher that amounts to about $30, about 20 per cent of the return charge that we are under obligation to pay under the lease. In that way we get a brand new machine of the latest design to replace an old one, and that is only equivalent to what we would charge to depreciation the first year if we owned the machine. We also consider that in replacing an old machine with a new one we are more money ahead than we would be to keep the old one and replace the worn parts.

The illustration which I gave for the stitcher as to the practice of exchanging an old machine for a new one is typical of the machines of all the royalty departments. The terms for any other royalty machine would be at least as favorable, if not more so.

When we can get United Company's machine without initial payment on the restricted lease we take them that way, and generally our machines are on the restricted leases.

As to introducing the machines of other people, the United Company has absolutely never, either directly or indirectly, or by intimation, questioned our putting into use any machine that we wanted to. We have had a number of machines in our factory that would be considered contrary to the
773 terms of the lease, such as three machines made by Freeman, which performed different operations in the bottoming room for which the United Company furnishes Goodyear auxiliary machines.

And when we put those machines in the agent was over there, and we told him we were going to put them in. He said: "That is all right, Hazzard; put them in. We will put ours alongside of them, and if we can't beat them we will take our hat off." They put them in and beat them out. Two of them went back. The third we paid our good money for, and it broke down, and we couldn't get an agent or parts, and we telegraphed to the agent in Cincinnati and couldn't get anything, and we put it in the attic, and if anyone wants it for ten cents it is for sale.

If anybody came along with a machine and it appealed to us we considered it. In my mind there has never been any idea but what if we could get something that would make our shoes better we would get it. Well, we took a chance on interference or prohibition from the United Company, and we never got in wrong. The United Company never bothered me any.

We formerly used the old welter and replaced that with a model G, and then replaced those machines with model K ma-

chines, the latest model, which we are now using. That machine embodies devices for holding and cutting the thread automatically.

From the standpoint of the earning capacity of the men, the amount the machine can produce, there is no question that the model K is away ahead of the other machines. I have some actual figures here from my own factory.

In 1906, when we were running the old welter, the price paid our welting operators was a third more than our present price on model K, but the operator on the model K earns more than he did on the old machine. Taking all the operators of the old welter I found that in November, 1906, their average wage was $16.38, while in November, 1913, the average wage on the model K welter was $22.30. That is, on the model K machine there was a 36 per cent increase in wages as compared with the old machine, although the price paid on the old machine was a third higher; that is, the higher wage was earned on the lower piece price. The best man on the old machine earned $20.95 in 1906, and the best man on the model G machine made an average wage of $32.64 during eight straight weeks. That shows a 50 per cent increase in earning capacity and a saving of one-third in piece price for the manufacturer. This was all under ordinary manufacturing conditions.

The figures on the high man were from the model G machine, which did not show as much increase as the model K.
774 We considered the model G and the model K machines practically the same in speed, but the model K machine has big advantages in the cutting device, which allows a man to do more work, and do it easier.

I had an opportunity to go further in this figuring. One of our good operators, whose rate I have quoted, had a little trouble with the foreman and left us. He went to work in another factory near us, where the old style welter is still used. I was able to get his wages during the last two weeks, and he is getting $24.12 a week, a little more than their average, where he was getting $32.64 a week with us; and they are paying a third more per piece than we are.

It is true that with the introduction of the improved welter the cost of that operation to the manufacturer has been reduced from 25 to 30 per cent; and at the same time the wages of the operative have been increased from 36 to 56 per cent. As to the increase in the output, we used to consider 25 dozen a pretty fair day's work on the old welter. That was for a day of ten hours. And if we have got an operator on the new machine that can't

maintain 40 dozen, why, we replace him, because we can't tie up the machine.

We expect 40 dozen or more a day from an operator. I have had two operators together sew on model K welters 140 dozen pairs of men's welts in one day of ten working hours, or 70 dozen pairs apiece; but, of course, that is an extraordinary day's work, and only shows the possibilities.

I also have some figures in regard to the stitcher. Arriving at the figures in the same way as on the welter, the average wage on the old model stitcher was $12.98 in 1906. In November, 1913, the average wage on the model M stitcher was $16.09; that is, an increase in the average wage of about 24 per cent, while the piece price on the old model was 40 per cent more than we are paying on the model M. But that does not really illustrate the possibilities, because our business has increased so fast of late that we have had to educate nearly all of our help. We are teaching a good many boys on the stitchers.

775 To give the machine full credit I will compare the high operators, as I did on the welter. During the four weeks of November, 1906, the high operator on the old stitcher earned $15.64 per week. The high man on the model M machine in November, 1913, earned $22.63 per week, an increase in wages of 45 per cent with a piece price 40 per cent less. These week wages are based on a 58-hour week.

There is absolutely no question that there is a saving in welting since the adoption of the new welt-holding and cutting device. The only question is as to the amount of the saving, and probably it will never be possible to determine that because with the old machine the waste of welting varied. When a man started to welt a shoe on the old machine he pulled the welt out through the welt guide and put his finger on it to hold it, and when he was working fast he was not always careful to pull just enough to get hold of, and I have seen a man pull out three or four inches. It averaged one to three inches.

In the new machine, that automatically cuts off and holds the welt in place, the welt is always in the same position when the machine starts and the operator does not have to leave any of it to hold with his finger.

There are four ends to each pair of shoes, and if a man wasted an inch at each point it would be 48 inches of welting on 12 pairs of shoes. Assuming that this was only 36 inches, that waste at six cents a yard, a conservative price, means six cents per dozen. We make over 400 dozen a day, which would make the saving amount to $24 a day, or $7,200 in 300 working days.

It is not always fair to use those figures, because the style of shoes varies in a longer or a shorter draft last, or you may get poor welting which they rip off and destroy. But any man can go into a factory using the old model and then see one on model K and he will. I think, admit that my allowance is conservative.

The saving on our 13 welters amounts to five or six hundred dollars per machine in a year. Five hundred would be $6,000. I said $7,200, so cut it down again. Call it five hundred. We consider that the quality of the work done on the new machine is much better; it sews a tighter seam than the old machine did, and the stop device makes it possible for the operator to stop the welt nearer the joint. The welt is supposed just to overlap the breast of the heel. It makes a very bad shoe if the welt either goes too far toward the heel or not far enough. It was pretty hard to stop the old machine at just the right place, but with this stop device a man can stop the machine just where he wants to.

776 In stopping the old machine the operator had to raise his hand above his head and take hold of the drive wheel, which was about twelve inches in diameter, and that necessarily racked him considerably. I should say that wheel was revolving about 350 times a minute. After he had grasped the wheel and stopped the machine he had to move it until it pulled the needle back into just the right position, so that the thread and welt would come free. Then he had to take a knife and cut the welt and thread. On the new machine that was done automatically. A man sewing 25 dozen pairs a day, the ordinary day's work, would do that 600 times, once a minute.

In the new model K welter all the operator has to do is to work his treadle and put the shoe in, and the machine does the rest of it. Our welter operatives are all getting more wages on the model K machine than they did on the model G machine.

Before we got the model K machines we had the model G, which was a comparatively new machine. We heard of the improvements on the model K and wanted to change. We returned the old machines and the new ones were installed, and it is my impression that they were exchanged without charge; if there was any charge it was nominal. Our change in stitchers was later, and we have been doing that gradually.

We get our repair parts for the United machines from the United Company, and for our fitting room we get our repair parts from the Singer Sewing Machine Company and from other companies. We have always felt that the parts that we got from the United Company were fully as well constructed and

fully as reasonable in charge as compared with the parts that we buy from other companies.

(Defendants' Exhibit 262 (Record, p. —), is a list of machines used by R. P. Hazzard Company in the manufacture of men's Goodyear welt shoes.)

Cross-examination:

When the United Company was formed I was a member of the Field-Hazzard Company, at Brockton. They were making men's Goodyear welts. Before that time we had obtained welters from the Goodyear Company, and we were using the Chase lasting machine. I don't know just which company it was put out the Chase laster. We always called it the "Chase Lasting Machine Company." I had used the Consolidated hand method lasting machine in Jamestown, New York, on McKay work, but did not use it in Brockton. I am not
777 sure whether we ever tried it in Brockton, but if we did, we didn't use it to advantage; that is, it was discarded if it was ever tried. As to why, I don't know whether we ever tried it; machines are continually being put into our place to demonstrate their practicability, which are turned down and forgotten.

I know that we never used, and that we never attempted to use, the hand method lasting machine on welt shoes in the Jamestown factory.

If you want an answer whether the Consolidated lasting machine will last welt shoes, it will. We have lasted them on it. Don't confuse that. We lasted those in Gardiner on the Consolidated. We lasted men's welt shoes on the Consolidated hand method machine to a very limited extent at the Snow-Hazzard factory in Gardiner, Maine. We had either two or three of those machines operating on welt work at one time, and the balance of the work was done on the Chase. That was considerably later than the time when the United Company was formed. I never made women's welt shoes. That was the machine called the "nigger-head" machine. When the United Company was formed the hand method machine was being used on McKay shoes. That machine, along during that period, was developed for welt work. Whether it was just before or just after the United Company was formed, I don't know. Before the United Company was formed we lasted welt work on the Chase machine and by hand. I never used an Ideal machine. I don't know what kind of work the Ideal did. I always assumed it was used more for women's work. That is,

it was always considered that the Ideal machine was for women's work. I never tried, and never saw an effort made, to use it on men's work.

I never bought a welting machine outright and never operated one which had been purchased outright, and I have no idea from personal experience how much it would cost to operate such a machine. That is also true of a stitching machine.

In Jamestown we used altogether the American heeling machine, which was bought outright. That was twenty-odd years ago, and I don't know what was paid for it. I have no 778 idea. We always used it while I was at Jamestown, and it did what was considered good work at that time, but we would not keep it ten minutes to-day. Machines have been improved since that time, but the manner of doing the work was entirely different.

For the machine which is now doing the same work which that heeler was then doing we pay a royalty of one-quarter cent a pair, but with that we get a lot of other machines that we did not have in those days. The accessory machines are worth pretty near the full amount of the royalty. We didn't have those machines twenty years ago, and we had to do the work by hand or not at all.

As to whether I knew anything about the system whereby a manufacturer would buy machines outright, Plant established a factory and the alliance established one in St. Louis, and I understand Mr. Long makes them. I wasn't in on the non-royalty factory in St. Louis. They wouldn't let me in.

The rather amusing part of that was that Mr. Plant sent me one of his statements and wrote me a very nice letter about the wonderful things he had in machinery at the time he started his newspaper campaign. I told him I was very much interested and should like to bring my superintendent to Boston and look the plant over, but he wrote me that the plant was not open for inspection. Afterwards he sent a nice illustrated pamphlet and I told him I could not see any use in sending it out if he didn't have anything to sell; and that if he did, I would like to see it. My letter was never answered. I never had anything to do with the operation of Plant's machines; he would not let me see them. I have never had any experience whatever with a factory in which all the machinery was bought outright.

It is not true that every one of the principal machines that we have in our factory are obtained from the United Company. I call the Reece buttonhole rather a principal machine if you are going to make a button shoe. You didn't say that you are not

talking about machines that work on the uppers, as distinguished from attaching the soles to the uppers. Now, understanding that you confine your question to the bottoming department, and also the eyeletting machines and clicking machines—as to eyeletting machines, we don't use the United Company's eyeletting machines. That is in the stitching department, too. We get our machines from the Atlas Tack Company, but the machines are made by the Peerless Machine Company. We use the United Company's clicking machines exclusively. As to whether the principal machines that we use in the bottoming department belong to the United Company, we use every machine of the United Company that it produces and we can get.

779

When the United Company gave that rebate of stock to all the Goodyear manufacturers we were fortunate in having nine thousand. We are sorry we didn't get more. That is the only stock of the United Company I own.

The reason why we don't take the United Company's eyeletting machines is because I don't consider that its eyeletting machine is as practicable, as good a machine, as the one we are using, which was developed outside of the United Company. I voluntarily took the United Company's machines under the restricted leases in preference to the unrestricted leases. The unrestricted leases were presented to us. I studied the unrestricted leases to get familiar with them. As to whether I looked over the unrestricted lease of metallic machines, I wouldn't answer. As to whether I looked over the unrestricted lease for heeling machines, I wouldn't say which particular machines we looked over. I know we looked over particularly in the general department. I don't presume that we looked over the individual machines in the other ones, that there was no question but what we wanted them. I never made an estimate to see what it would cost to equip our factory under the unrestricted lease.

I would like to make one statement here that might clear the field a little bit. I started in business in 1906, seven years after the United Company was formed, in the open market for my machines, with absolutely no string on me at all, and I took the United Company machines because I thought it was to my advantage, but it was not on account of any leases I was under at that time.

780

Q. Did you try to get machines anywhere else?

A. No.

Q. You didn't try to get a welter anywhere else?

A. No, sir.

Q. Or stitcher?

A. No, sir; because I had already been in the business and I considered that the United Company's service was above question.

Q. Did you try to get lasters anywhere else?

A. No, sir.

Q. Not a single machine?

A. Not that I got of the United Company.

Q. As a matter of fact you couldn't have gotten a machine anywhere else, could you?

A. Why, yes.

Q. Just name a person or concern from whom you could have obtained a principal machine at that time?

A. I understand the welters and stitchers have been used in England and abroad considerably, if we wanted to pay duty on them.

Q. But here in this country name a single person that was manufacturing either one of these machines at that time from whom you could have obtained them.

A. It don't make any difference; the steamers run every day.

Q. Do you know of a single person in this country from whom you could have obtained one of these machines at the time you went into business in 1906?

A. What do you mean by one of these machines?

Q. I mean the principal machines of the bottoming department that I have mentioned.

A. Sure.

781 Q. Name a factory.

A. Leveler.

Q. Who from?

A. That is rather a hard question to ask, to go back six years and tell just what machinery houses were in existence at that time. A man could go out and buy an Acme leveler, all he wanted of them, but the Goodyear leveler was so far ahead of it there was no question.

Q. But you couldn't have bought, so far as you know, a welting machine or a stitcher or a lasting machine or a heeling machine or a metallic fastening machine from anybody else?

A. I think I could have got a heeling machine.

Q. Who from?

A. I couldn't answer that.

Q. As a matter of fact, you didn't try?

A. Yes. I say that I didn't try because I wasn't interested. You might go into Young's and buy a hat, and you might not look anywhere else because you wanted a Young hat.

Q. And you didn't look anywhere else to see the kind of machines they were putting out?

A. I knew what machines were on the market, and I picked out what ones I thought were best.

Q. You didn't make any investigation to see on what terms other machines could be obtained?

A. I was constantly in the machinery market, and any machines that were brought out I probably knew as much about them as anybody.

782 My reason for taking the restricted lease was primarily a question of finances, to save my money for working capital instead of tying it up in dead capital. Another reason was that I considered that the liability of loss in the replacement of a machine by a more up-to-date model would be less under the restricted lease than under the other lease.

Q. Have you examined the leases to see if that is true?

A. I have never taken as much interest in the legal wording of the United Company's leases as I have in the personality of its people, and I have always had fair treatment from the United Company.

I pay from five to six thousand dollars a month in royalty, from fifty to sixty thousand dollars a year. I always pay my royalties promptly. As to whether I know of any advantage that a shoe manufacturer has derived from taking the unrestricted leases in preference to the restricted leases, every man is influenced to a certain extent by his past experience, and it is sometimes hard to rightly judge a man's motive unless you know what prompts it. And I was in the shoe business before the United Company was formed. The Goodyear Company let out their machines on leases and royalty similar to the way the United Company is doing. I never yet have been able to find anyone that was ever able to get any rebates or concessions of the United Company that the other fellow didn't get. The big man was never discriminated against a small man. It cropped out after the Goodyear Company went in that the Goodyear Company did that. I know that the Goodyear Company gave rebates to whom ever got next. I was the little man, and I was next and some of the big ones weren't next. That developed in later conferences. That developed in the Goodyear Company. I was on the inside. Where does that put the manufacturer? While I was getting it I never knew whether I was getting as much as or less than the other fellow. Consequently we were at sea.

Now we can do business with the United Company, because I know every man that is in competition with me is getting the

same deal that I am. With the old companies it was every one out to see who could bring the most pressure to bear and get on the inside. The thing which pleases me especially in this system is that I stand on an exact footing, so far as machinery and repairs are concerned, and everything of that kind, with every other shoe manufacturer that leases from the United Company, because I am conceited enough to think that if given an even start I can hold my own. I question whether if they succeed in making the United Company so change their leases that people can buy their machines in the open market—and the United Company can hold enough of its business so they can continue to give to the manufacturer the same service that they did before you commenced to prosecute them—I think that the man that buys the United Company machines and sticks to them and pays his royalty will make better shoes and make them cheaper than the man that goes outside and buys competing machines.

It is none of my hunt if a man buys outright machines and operates them in competition with me. If he shows he can beat me, it is up to me to follow him. As it is, we all stand exactly on the same plane, provided we are willing to take the same advantage. Unfortunately some of them are not taking advantage of what the United Company is willing to offer them, and their plants are not up-to-date; but they have nobody to blame but themselves. They know it is there, and they don't take it. As to whether I mean they don't take the improved machines, but go on with the old machines, although it is no expense to have them changed, sure; out of spite. Bite off their nose to spite their face. Some of the manufacturers, in my judgment, are in that class.

The model G welting machine was about as rapid as the model K in its operation of sewing a shoe, but not in the ability of the operator to handle the shoes. I should say that it was a fact that the welter was not improved up to 1908. There was no radical change, as I recall it, until the model G machine was brought out, about 1909.

783 It was some little time before the Plant purchase by the United Company that all the manufacturers understood that Plant was trying to develop a line of machinery in competition with the United Company.

As I recall it, Plant had been advertising for a limited period before the United Company acquired it. It had been a matter of gossip in the trade.

As to whether there had been no improvement in welting machines up to the time this gossip got into the trade, in the development of any machine it is a question of a considerable

time, and I do not know whether the United Company had been working on the development of the model G machine one year or ten years. I couldn't say how long there had been this talk in the trade before the machine got on the market.

The increase in the amount of work accomplished on the welter which we have now would be in the neighborhood of 60 or 70 per cent. We always make our capacity, which today is 5,000 pairs a day, because we keep running all the time through the service we get from the United Company. As to whether that depends more on the trade; no, sir. As to whether if somebody does not buy our shoes we wouldn't make them, we have never been in that condition. We have always made our capacity, whatever it was.

We have 13 welting machines. Whether we run them all the time depends on whether our help is all experienced or whether we are teaching help. Over 40 dozen pairs a day are done on most of the machines. Our good welters will do that, but learners will not. About 40 dozen are actually made. It may go a dozen or two over or under, depending upon the average of the experienced help. On the machine we used before we got the model G our operators produced about 20 to 25 dozen pairs.

The model K machine has the stop device and the cutting device, but the model G did not have them. A man can produce more shoes on the model K machine. It does not run any faster than the model G, but there is enough time saved between shoes so that a man can sew more shoes in ten hours. The model G sewed the seam as tight as the model K and made just as good a shoe, with perhaps the exception of the ability to stop the welt at the right point. I tell you frankly the only thing we ever considered in the model K was that it was easier for the operator.

The operator could sew more shoes, and we could make a saving on our welting and get the shoes welted fully as good or a little better.

I don't know what the difference in capacity between model G and model K is. I have given the difference in capacity between the old model and model K.

784 The operator of a welting machine works practically all day, ten hours except Saturday and eight on Saturday. As to whether I mean to say that a man works all the time without any relief whatever for 10 hours a day, why practically. He never leaves his machine unless he goes to get a drink of water or something of that sort, if he has work. He

might have to wait for a rack of shoes. He never kills time with the object of resting.

As regards the saving of the welt, as a matter of fact a man could, by exercising proper caution, cut the welt about an inch long, but you have about as much chance of winning on that as the proverbial snowball. I have talked with operators by the hour about that.

I was in error in calling the heeling machine that we used at Jamestown the American. It was the National heeling machine. That machine can not to my knowledge be obtained at the present time.

We have changed all our welting machines and they are now all model K. I am not sure whether we have yet changed the last one of our stitchers. The capacity of our factory is 5,000 pairs a day, and we have thirteen welters on which the experienced operators make forty dozen a day. Our capacity would be 6,240 pairs per day if we had experienced operators on all the machines, but we have not. As a matter of fact, our welters, taken all together, do not run to their full capacity, and this is because we are in a country factory and we teach all of our help. Fifty per cent of our help has been taught in the last six months, and we have to have some extra machines to allow for the falling off in production when we teach new operators. It is not true that this is one of the conditions which has to be met in all factories. It depends on whether one has got to teach green help or whether he is in a shoe district where he can get experienced help. We operate the factory to the capacity of the factory, but we do not operate each individual machine to its capacity.

Our shoe is what is called a medium grade Goodyear welt shoe, and the retail price is from $2.50 to $3.50.

I do not know how long either a welting machine or a stitching machine or a lasting machine will last. Much depends upon the use or abuse by different operators. I have never followed the life of a machine.

The machines which I testified the United Company did not object to my putting in were manufactured by L. G. Freeman, of Cincinnati. The machine we bought and kept was an insole tacking machine. We bought it in 1910 or 1911. That machine did not abate the United Company's royalty any, and we had that much more investment in machinery. The more capital we put into our business the more it costs to make the shoe, and we got that machine because we thought it was probably better than the United Company's machine.

785 Those were not the only machines that the United Company permitted us to put in. We put in other machines, for instance, a fudging machine, which I believe is in competition. That is used for indenting the upper face of the welt after stitching. That machine did not affect the amount of royalty we paid, and we have never undertaken to put in any machine that had effect on the United royalty.

Our ten skiving machines have come from different places. Some of our nine perforating machines came from Stanb[illegible] & Company and some from the Peerless Machinery Company. I believe the United Company classifies them under general department machines, and they are bought outright. The bobbin-winding machines in the stitching room came from the Singer Company.

We have our own repair men to repair machines that do not belong to the United Company. The number varies. We keep from one to two men in the stitching department, and then we have our head machinist, who sometimes has one or two men under him. It is not customary for them to repair the United Company machines, but if for any reason we could not happen to get hold of an agent for minor repairs, we would not tie up the machine to wait for an agent. As to whether if we want the work done immediately, we don't wait to get a United man there, but do the work ourselves, no; sometimes we wait; sometimes we don't. As a rule we do not have to wait, because the man is there. Auburn is about sixteen miles away, but there are three or four resident agents who cover the factories in Augusta, Hallowell, and Gardiner, which are only six miles apart.

The total cost of all the repairs on our Goodyear machines, including the cost of needles and awls, which is a considerable part of it, is approximately $300.00 per month. We buy the bulk of those parts from the United Company. We don't have to buy our needles and awls, and we don't buy from the United Company all of the repair parts for their machines. We buy quite a number of new parts from Chisholm, of Brockton, Massachusetts, and send parts that have been worn down there and they repair them, which is contrary to the leases. We thought it was cheaper to send those parts down to Chisholm and have them fixed up than to buy new ones. There has been some argument in the factory whether it was cheaper or not.

The Acme leveler is still in use. I know it was on the market when I got the automatic leveler in 1906. I don't know anything about it now. It is not practical for use to use it as compared with the Goodyear.

Direct examination resumed:

When I said on cross-examination that we had nine
786 thousand in the stock of the United Company I meant in
dollars on the basis of forty-five. It is approximately two hundred shares. That is what we got under the 1910 plan when the stock was distributed.

We use the United Company's clicking machines. Our outside cutters in Gardiner are getting about one hundred per cent more than they did in 1902, and the rest of the help through the room have got also an increase, but our cost per pair is about the same. That was altogether due to the adoption of the clicking machine, and it does better work than the hand cutter.

787 DECEMBER 17, 1913.

WILLIAM A. T. BLAGDEN, witness for defendants.

I live in Gardiner, Maine, and am assistant foreman in Mr. Hazzard's shop. I have been assistant foreman for about six months, and prior to that I had operated a welter since 1903. I worked in Auburn, Maine, in 1903, and then at the Plant factory in Jamaica Plain. I was at Plant's several times; about twenty months altogether. I also worked in several other factories, and I ran a welter in each of these places.

I operated the old-style welter until I went to Gardiner, and I have also operated the model G and model K welters, and I am familiar with the operation of each one.

There has been an increase in the capacity of the machines from the old style of welter that I operated before the model G down to the model K, and an increase in the capacity of the operator in getting out the product. The old machine sewed approximately 375 stitches per minute and the model K machine sews 500 stitches per minute. We figure 62 stitches on a man's shoe.

With reference to the difference in the capacity of the operator in getting out work on the old type of machine and on the present type of machine, we considered 300 pairs, 25 dozen, a good day's work on the old type of Goodyear machine. On the model K machine 40 dozen is an average day's work. I have sewed more.

A day's work is ten hours with us. I have exceeded that amount very considerably, and have done 65 dozen in a day on the model K machine; 25 dozen would be a day's work of the average experienced operator on the old machine, and 40 dozen a day's work for the same type of man on the model K machine. Extra good men can do more than that on the model K machine. At the time I did the 65 dozen the man who was working with

me did 75 dozen. Together we did 140 dozen in one day. As to how long I could keep up that pace, I never tried it.

In operating the old type of welting machine the operator had to place the welt in position and hold the welt and thread. He held the end of the welt with the finger on the left side of the shoe with the shoe bottom up and the thread between the thumb and forefinger. The needle comes through from the outside. You start the stitching on the left side and sew around to the opposite side. At the end of the operation the operator removed the shoe, welt, and thread from the machine, picked up his knife, cut off the welt and thread, laid his knife down, and put the shoe on the rack.

On the new model K machine the welt and thread are held automatically by the machine. The operator simply puts the shoe into the machine, puts his foot on the treadle, and goes around the shoe; he doesn't have to hold the welt or the
788 thread at all. When he gets through he removes his foot from the treadle, the stop motion brings the machine to its former position, and as the operator removes the shoe from the machine the pulling of the welt trips mechanism which makes the pincers and cutters come down and sever the welt. The operator removes the shoe still more, swings it up over the knife guard on the loopers, and the operation is done.

In stopping the old Goodyear machine the operator took his foot off the treadle and grasped the flywheel which had been turning 375 revolutions, and it was the same with model G. The operator can't stop it instantly because if he did it would throw him up over the machine, so he must use his hand as a friction in stopping the machine; 25 dozen pairs is 600 shoes, and the operator naturally feels some effect from doing that 600 times a day. As to how much that would tire the operator, well, that is rather a difficult question to answer. Possibly I could tell you better by the way a man's hand looks with which he stops the machine. A welter who is welting shoes with the old Goodyear can easily be distinguished. The palm of his hand is burned from friction, and calloused; and also his finger where he has held the welting thread is calloused. That can not be avoided.

Besides bringing that flywheel to a standstill, you had to turn it back towards you in order to remove the needle from the work, and that had to be done every time. That has now been entirely eliminated.

Doing away with three operations and having the machine perform them is a relief for the operator. It saves his time and saves his strength and quickens him in his work. Also the

machine is more accurate in its operation and in its place of stopping than a man could be. It stops exactly.

On the model K machine the speed can be slowed up in going around the toe, which is desirable because the work is harder there, and it can be speeded up again in going down the other side. There is a saving in welting and a saving in thread on the model K machine. Where the welt had to be held with the finger as in the old machines, the natural waste of welt, in the ordinary operation of the machine, would be the amount that was required to hold with the finger. You have to get a fairly good hold of the welt or it will be pushed out of your fingers. The amount you would have under your finger would be about three-quarters of an inch. With the model K, if a man has a butt of the welt more than half an inch long, he is wasting leather.

From a memorandum which I made from a book which I had while I was employed at the Plant factory, where it was necessary to take each day's work, I find that my average wage for ten consecutive weeks on the old-style Goodyear welter was $23.52. That was in 1902, I think. For ten consecutive weeks on the model K machine my average wage was $30.69, a gain of
789 about twenty per cent, and I was working practically the same hours. I didn't consider I had to work so hard. The piece price at the Plant factory was about one-third more than at the Hazzard factory ~~an~~ the model K. That is, I was paid one-third more per dozen and earned less money. I have worked on the old-style Goodyear since I have been with the R. P. Hazzard Company, but I have no figures that will show what I used to earn with them on the old-style Goodyear as compared with the model K.

The United Company always teaches a new operator. When a green man comes in whom we want to put on a welter we call for an agent who comes and stays with the man from two days to a week, and spends his time in instructing that man until he is competent to run the machine alone. A week's training will not make a man competent to run a welter, as it is a matter of practice, but it will teach him the rudimentary parts of the work. As to how soon we let him operate on our product, we generally give him a day or two days' work upon an inner sole tacked to a last to give him the shape of the shoe; then the man is allowed to take the work.

In addition to the saving in the length of the welting, there is a saving in the width on the model K machine, because that machine lays the welt flatter on the shoe, so that welting one-half inch wide can be used, where on the old machine it would

be necessary to use a width of nine-sixteenths. That is, there would be some saving of welt in the width of the welt as well as in the length, and you get as good a result.

Cross-examination:

PUTNAM, J. Mr. Gregg, do you make any question about the claims made by Mr. Choate with reference to the Shoe Company training new hands and furnishing parts and materials?

Mr. GREGG. Training new hands? No, sir; not in the least. And furthermore, there has been some testimony introduced along the line that would tend to indicate that the Government contends that they should not lease their machinery—that they ought to sell their machinery. We have never made that contention at any time. My position is that we don't object to the leasing at all, but we do object to the defendant's system of leasing.

The WITNESS. I should say I went to the Plant factory in 1904 and I left there in 1909. I worked on the old Goodyear welter at that time. None of Mr. Plant's machines were used while I was there. I should say the model K machine first came out two and a half or three years ago. There was no appliance on the old Goodyear welter or on the model G machine for stopping the machine.

790 DECEMBER 17, 1913.

ELMER P. HOWE, witness for defendants, resumed.

After the correspondence between Mr. Storey and me Mr. Winslow received a letter dated January 29, 1901, from George C. Houghton, secretary of New England Shoe and Leather Association, to which was attached a report which the committee prepared to give the press. This letter and the report constitute defendants' Exhibit 263.

DEFENDANTS' EXHIBIT 263.

New England Shoe and Leather Association. President, Andrew G. Webster; 1st vice president, Elisha W. Cobb; 2d vice president, Robert Batcheller; secretary, Geo. C. Houghton; treasurer, Geo. McConnell.

BOSTON, MASS., *Jan. 29th, 1901.*

S. W. WINSLOW, *President United Shoe Machinery Co.,*
Albany Building, Boston.

DEAR SIR: I am directed to inform you that the committee have voted to accept the draft of lease as submitted by Mr. Howe to Mr. Storey and I herewith enclose a copy of a report which they have prepared to give to the press. I am,

Respectfully, yours,

GEO. C. HOUGHTON, *Secretary.*

Dic. G. C. H. Enclosure.

661

Shirley, Reporter, City Editor 1–15.

A settlement of the lease controversy has been reached between the United Shoe Machinery Company and a committee of the New England Shoe & Leather Association, together with a committee of the National Association of Boot & Shoe Manufacturers, by which the Shoe Machinery Company offer to shoe manufacturers a choice between the lease as originally drawn, or a modified lease which contains among the several important concessions the right to use metallic fastening machines in connection with lasting, welt sewing or other machines other than those owned and leased by the United Shoe Machinery Company. To such users the company may charge not exceeding 10% more for metallic fastening than to those who use the entire system of the United Shoe Machinery Company.

The option of selection of either of above leases will not expire until Feb. 1st, 1902, after which there can be no change from the original to the modified lease, except by agreement; but the holder of the modified lease may change to the original at any time, by giving six months notice in writing.

The committee will at an early date prepare and issue to the trade a detailed report.

Sent to the press at same time it was sent to us.

H.

791 On the same day I received from Mr. Storey the letter of defendants' Exhibit 264.

DEFENDANTS' EXHIBIT 264.

E. P. H. File.

BOSTON, *29th January, 1901.*

E. P. HOWE, Esq., *Exchange Building.*

DEAR SIR: The committee of the New England Shoe Manufacturers' Association instructs me to notify you that they will accept the last draft of the independent lease which you have submitted to them, upon the understanding, at which I think we have arrived, that the persons who have taken your ironclad lease pending these negotiations may, if they see fit, take the independent lease, and that there shall be attached to the ironclad lease a rider authorizing the holder to surrender it and take the independent lease at any time up to the first day of February, 1902. I understand, moreover, that it is your purpose to offer both leases for an indefinite time thereafter unless something in the business situation leads your company to change its policy.

Please let me hear from you that I have correctly stated our understanding, and oblige,

Yours, very truly,

Del'd C 30. MOORFIELD STOREY.

In reply to Mr. Storey's letter I wrote a letter on the same date, a copy of which, together with the rider referred to therein, constitutes defendants' Exhibit 265.

DEFENDANTS' EXHIBIT 265.

Copy to Mr. Winslow. E. P. H. File.

BOSTON, MASS., *January 29, 1901.*

MOORFIELD STOREY, Esq.

MY DEAR SIR: I beg to acknowledge your favor of this date informing me of the action of the committee of the New England Shoe Manufacturers' Association concerning the Independent lease offered by the United Shoe Machinery Company. I confirm what I have heretofore stated to you, namely:

1. That any lessee who, pending the negotiations with your committee, has signed the United lease of metallic department machinery (which you refer to as the ironclad lease) or any lessee who shall hereafter sign such United lease may, at any time up to February 1st, 1902, upon giving thirty days' written notice to the company, surrender it, if he is not in default thereunder, by executing an independent lease of the same machinery, and that the United Company upon the request of any such lessee under the United lease will attach a rider to his United lease expressly granting to him the right to exchange it for an independent lease. A form of such rider is sent herewith.

2. That the United Company intends to offer both the United and the independent lease for an indefinite time after February 1, 1902.

The independent lease has been sent to the printer, and as soon as I have a corrected proof, I would like to submit it to you.

Very truly, yours,

Enclosure.

792 RIDER FOR "UNITED" METALLIC LEASE.

The lessee, if not in default in respect to any of the conditions, agreements, stipulations, and provisions in Lease No. , granted by the undersigned for certain metallic department machinery, upon giving at least thirty days' notice in writing of his intention so to do, shall have the privilege of surrendering this "United" lease and license at any time before February 1 1902, by executing the "independent" form of lease and license agreement in respect to the leased machinery.

Dated, Boston Mass.,

190.

By UNITED SHOE MACHINERY COMPANY.

The policy outlined in this correspondence was carried out by the United Company. The two leases were offered to manufacturers at their own choice for an indefinite period after February 1, 1902. The majority of the manufacturers having leases at that time elected to take the restricted lease. Certain other manufacturers who had in their factories machines of other departments, not made by the United Company, which they wished to retain, took independent leases.

Until these conferences occurred the United Company had continued to put out all the machines of the constituent companies in exactly the same way that those companies had put them out, except that they had put out practically no leases on the metallic machinery, nor had the McKay Company for a time previous to the consolidation.

The United Company continued the method of leasing practiced by the Goodyear Company until 1905, in the main. It was the practice of the Goodyear Company to charge initial premiums for all its machines. I don't recall what the initial premiums would aggregate, but later, after the United Company had added a lot more auxiliary machines to the Goodyear system, the initial premiums for all of them, about 32 machines, would aggregate $3,605. I have no figures for the total initial premiums on the 16 machines put out by the Goodyear Company before 1899, although I can easily get the figures.

The United Company did not increase any initial premiums formerly charged by the Goodyear Company but decreased some of the initial premiums on the auxiliary machines. For example, the initial premium of $500 charged by the Goodyear Company on the automatic sole leveler was reduced by the United Company to either $400 or $350.

After the United Company was formed it acquired the Gem insole machines, which previously had been put out on a royalty, and after that paid back the royalty to all manufacturers who used the Goodyear principal machines entirely. So that in effect Gem insole machines were made auxiliary machines to build up the Goodyear welt system.

793 After we acquired the sole laying machine of the Boot & Shoe Sole Laying Company, which had charged a royalty for the machine, we took off the royalty and put the machine in with the Goodyear set without increasing the royalty for the set. In 1891 that company charged a royalty of 1½ cents a pair on all soles laid. Whether that royalty was in existence at the time the United Company purchased it, I don't remember; but at least some royalty was in existence. We acquired from the Boot & Shoe Laying Company several patents,

one of which had prevented the Goodyear Company from making certain improvements that it wished to make on its sole-laying machine.

As a member of the executive committee I gave a great deal of attention to the new factory of the United Company at Beverly.

About 1901 or 1902, when the need of a single factory to accommodate all the business of the company was apparent, two committees were appointed, one to consider available factory sites in different parts of New England, and the other to examine the best factories in the United States to determine upon the type of construction and the arrangement of the different departments. The Beverly site was finally decided to be the most advantageous we had learned of, and after certain necessary arrangements were made with the city of Beverly, such as laying out new streets, providing sewerage, and deepening the channel in the harbor up to the factory, an architect was employed and a building was devised in conjunction with the committee on factories, and with the individual attention of the executive committee.

There were no other reasons than economy and business reasons for putting all the manufacturing into one building. It was found to be disadvantageous to have three factoris located at such distances apart, and the Winchester factory could not be operated efficiently because Winchester was a residential town and it was difficult to obtain good help.

Up to the time the new factory was ready the manufacturing was continued in the old factories. Business increased in each of them, and before the Beverly factory was ready each of them was crowded. All the business done in the old factories was gradually transferred to the new factory, as fast as it could be done without disturbing the operation of the old factories.

Q. Had you anything, Mr. Howe, to do with the drafting or the direction of the drafting of the papers which were executed in connection with properties acquired which have been referred to in the bill of complaint?

A. Yes; I had the direction of it in the main, associated, perhaps, in some instances, with Mr. Storrow; and the precedents which I established have been mainly followed by my associates since the early days.

Q. Will you state the reasons for the use of any covenant in thosea greements, so far as there were any, and their application to the different kinds of contracts to which they are connected?

A. Well, following the precedents of purchases of business with which I was familiar, there were in almost every instance inserted, not only covenants as to title and further security, but an agreement in the case of a business not to enter into competition with the business sold for a greater or less time, and I understood that if they made a mistake in getting the time too long, or if the territory which the restraint was made to cover was
794 too large, they were not restrained in any way by the common law, were not forbidden, were not criminal. It might be a question of their enforcement by the courts, either for damages at law or for specific performance or an injunction. Therefore we were not always particularly careful about drawing them. Some of them forbade the vendee, I notice, for an indefinite time, from competing. Such contracts always have been construed by the courts in respect to the peculiar circumstances of each contract, and the need of protection to the vendee. And the courts have been known to construe those contracts where the word "hereafter" is used to what they deemed a reasonable time. Most of these covenants are intended solely for the protection of the vendee and what it paid for extends for periods of ten years or fifteen years. The only one of the acquisitions of business mentioned in the petition which has been in litigation, and the only one which the United Shoe Machinery Company sought to enforce, was the contract for the purchase of the needle business of Kimball & Hadley, where the vendor covenanted to keep out of competition for fifteen years, and the Supreme Court of Massachusetts said that that was reasonable and proper and granted an injunction against Hadley from doing it. That was the only one of these contracts that it has ever been sought to enforce.

Q. And, so far as you know, is it the only one about which any question has arisen?

A. It is the only one.

Q. Some of these contracts which contained covenants were contracts for employment under which the vendor entered the service of the company and was in its factory and about its machines?

A. All of the contracts of that class were, I think, with inventors, by which they were to devote their entire time to studying up improvements in our various machines, and those agreements contained covenants not to disclose those inventions, and to render all possible assistance in developing them and in getting patents for them. In those contracts there is invariably a covenant to convey all future inventions in or relating to shoe machinery during the period of the inventor's employment by the

company, and in some of them for three to five years after he should leave our employment. That covenant was inserted because it was thought reasonable that the inventor, having been educated in the factory and about the machines of the United Company, necessarily came into possession of what might be called trade secrets, and other inventions which we had in process of development, and therefore required that he, being supposed to have these inventions in his head at the time he left our employment—required as a reasonable matter that for a certain period, say three or five years, after he left our employ he should give us any improvements he made in the art of shoe machinery which we might desire.

Q. Was the form of these agreements, or the form or kind of covenant inserted in the agreements, a matter upon which the directors of the corporation acted in any respect?

A. They were not. Neither the directors nor officers of the company as far as I know ever had anything to do with them. In fact, except in special instances, where they may have read that part of the contract, I doubt if they knew what they were.

Q. Or did you receive directions from President Winslow as to the covenants you should use?

A. Neither from the president nor from any officer.

Q. You then exercised your own judgment as a lawyer?

A. That matter was all left to the legal department.

Q. Was there any intent upon your part to bring about a monopoly or an unlawful restraint of trade by the use of those covenants?

A. No intention whatever. It was merely intended for the protection of the company in what it had paid for, or what it had contracted to pay for.

I think I was familiar with every instance in which covenants of the leases have been enforced by the United Company, except cases of bankruptcy, and perhaps some cases in which lessees failed to pay royalty.

795 Q. I would like to call your attention to those provisions in the leases which reserve to the lessor the right to cancel either because its machinery for a certain purpose is not used exclusively by the lessee, or because the lessee has broken his agreement with respect to the restricted use made of the machines leased, and ask you what instances, if any, there have been where the company has taken any action with reference to the machines under either of those clauses, that you know of?

A. The only instances that I remember are the cases of T. D. Barry & Company, of Brockton, where they were using Goodyear

auxiliary machines with regard to which we had no opportunity to determine the extent of use, and therefore had no means of collecting royalty in connection with the machines of the Standard Shoe Machinery Company; that is, they were using Goodyear auxiliary machines to prepare and finish the work which was sewed and stitched on Standard welt and turn sewing machines and Standard stitching machines. There was also the case of E. Bottomley & Company, at Haverhill, who had a set of Goodyear machines, and who purchased some Duplessis machines and set them up and laid the Goodyear machines, except the auxiliary machines, to one side, and we were deprived of our royalty, and we therefore replevined the machines, as we did in the case of T. D. Barry & Company—replevined the machines.

Q. And Tessier?

A. Yes; Peter Tessier also put in some Duplessis machines, and it was really violating our lease in the most flagrant way by using our machines to prepare or to finish the work that was done on the Duplessis machines. Furthermore, when his attention was called to the violation of the lease, I think he gave up his Goodyear machines without the necessity of actually prosecuting a replevin suit against him.

Q. He had already provided himself with others?

A. Yes, sir.

There was also the Bell concern, at Beverly, who used wire which they acquired from outsiders on the metallic machines. I didn't have personal knowledge of that. There were only these five cases where any right under those clauses was exercised in the twelve years before the bringing of the suit, with something like 1,000 or 1,100 lessees.

The matter of the United Company's action under those clauses has been a matter of discussion for some six or seven years either at legislative hearings here in Massachusetts or elsewhere, but nobody has produced any cases other than those five; they can't because they didn't exist.

I made an examination of the machinery in the Thomas G. Plant Company factory. I was there with Mr. Winslow when he examined it. During most of the time that we were there Mr. Plant went around the factory with us and showed us all the machines that he had in operation. I saw the lasting machines, the leveling machines, the welt sewing machines, the stitchers, and various lines of finishing machines.

They were nearly all of them old machines in design of the United Shoe Machinery Company, the Goodyear machines, or in the metallic department, with certain improvements which had been added to them by Mr. Plant, but they had a family

resemblance to the United Company's machines. The machines to which I gave most attention, naturally, were the welt and turn sewing machines and the outsole stitching machines, the heads of which—I don't remember the bases—but the heads of which bore a very close resemblance to the Goodyear machines for the same purposes, but he had added to those machines his different improvements.

796 During that examination I gave special attention to the extent to which Mr. Plant was infringing our patents, because we had already brought certain patent suits against him and the T. G. Plant Company, and I was very anxious to see how far we were confirmed in bringing those suits. I found a great many infringements that to my mind were clear if our patents were valid. I noted infringements particularly in the lasting machine, the heeling machine, and the leveling machines.

In the main, Mr. Plant's improvements were improvements on old machines. He had taken our machines, whether he had a right to or not, and had made certain improvements on them. As an illustration, referring to Mr. Plant's welting machine, I concluded from my examination, as I have stated, that Mr. Plant had taken some of the inventions in our machines and had added the stop-and-start motion, which has been very fully described, and also the machine for cutting off the welt and the thread, and making a great saving in thread and in welting used in the machine. I felt very sure from such study as I could make in the time I was up there that that feature was a very valuable feature of the machine. He had taken an improvement owned by the United Shoe Machinery Company and one Winkley, which we had never introduced into commercial—into Goodyear machines.

Q. What result did that produce with reference to the practicability of making use of the good features both of your machines and his improvements, if you insisted upon your patent rights and he insisted upon his patent rights?

A. Well, it would have been a stop in the development of shoe machinery in these lines. We should hardly have dared to go ahead with the improvements in our machines for fear of not succeeding in our patent litigation, or of conflicting with such improvements as Plant had patented. On the other hand, Plant, or any company which he might form, would have hardly dared to go ahead with the possibility of these infringement suits. These infringement suits, or a good many of them, were then pending, and certainly he would have found very few customers, I think, for his machines.

Q. Let me for the moment let out of the discussion the doubt about the result of the litigation and the uncertainty. If you established your claims, would he have any machine to which to add his——

A. He wouldn't until the expiration of our patents.

Q. And if he established his rights, or what he claimed were his rights under his improvements, could you have produced the machines?

A. That would have stopped the improvement of our machines.

I was at all the conferences, at which Plant was not present, when the question of acquiring the Plant inventions was discussed. The first time I met Mr. Plant in the negotiations was at Mr. Whipple's office in the latter part of June, 1910, where the question whether some method could be devised for allowing our experts to examine Plant's machinery was brought up again. It was discussed whether we should give a bond for one million dollars, to be forfeited to Mr. Plant if we did not purchase.

At these conferences and all along Mr. Winslow always took the position of declining to discuss prices or a price for the machinery and inventions until he had convinced himself by experts, in whom he had confidence, as to the value of these inventions to the United Shoe Machinery Company and to its lessees.

Q. And did his view prevail in the councils of the company?

A. Entirely.

Q. Now, when you and he made the examination did you form an opinion as to the value, I don't mean in dollars, but as to whether they were valuable or not, all these improvements and inventions of Mr. Plant?

A. After we examined it, Mr. Winslow and I rode back to the Algonquin Club, and for the first time compared notes, and we both agreed that Plant had some very valuable improvements that if we could get the ownership of at the right price could be introduced into our machinery in conjunction with our own experiments in the way of improvements that had then been under way for several years, and that by utilizing them
797 in that way Plant's inventions could be made very valuable.

Q. What has been the course which the company has pursued in reference to giving the trade the benefit of those inventions acquired from Plant?

A. Ever since the time of the purchase of this machinery and inventions from Plant the experimental department of the United Shoe has been at work to attach them to our machines and build new machines, as the case may be.

Q. Embodying——

A. Embodying Plant's inventions, and they have been leased to our lessees just as soon as each machine was developed commercially enough to do it. You understand we never attempt to put out a machine on lease until it has been demonstrated by a successful practicable machine.

Q. And that takes time, I suppose?

A. It does, and you can't anticipate how much time it will take, either.

Q. And is that practice still being pursued?

A. The resources of our experimental department are crowded to the full, and have been since the Plant purchase, doing just that work.

Q. Well, the United States charges the company with having suppressed inventions. Now, what has been your observation, Mr. Howe, with reference to the management of that department of the United Company?

A. The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. There have been patents bought which under our experiments never came to anything, never were worth anything, and therefore the patents were laid on the shelf, but I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed.

Q. Mr. Howe, in the organization of the United Company, or in the different acquisitions which have been charged in the bill brought by the United States, has there been, so far as you know, a purpose to kill, to restrain competition, or to achieve a monopoly in shoe machinery?

A. There has not been any purpose to do that or any of those things. The business when organized, and in its development, has been a gradual expansion, not only along the lines of the constituent companies, improving, developing, and leasing those machines, but also from time to time, as circumstances warranted, an extension of its business into other fields, like eyelets and nails, for instance. When the Goodyear Company was in operation, in connection with its lasting business, it required the purchase of tacks for use in its Ideal lasting machines. The United Company after it got possession of the Goodyear took that requirement out of the leases, but still, at the same time, it seemed to be necessary to exercise supervision over the tacks or nails lest the machines themselves would get out of order, owing to the fault of the tacks.

The tacks and nails which we have to use on our machines have to be of a particular size and hardness, and particularly right in shape to go through the chutes in which they run in the machines. The metallic fastenings also have to be of a particular composition.

We had a contract with W. W. Cross for making tacks, which are used mainly in connection with the lasting machines. The demand for them became so great that it was a problem as to how we would get them. There were not tack makers enough to make them, so we organized the W. W. Cross Company, took in Mr. Cross as manager with a large interest, and supplied the capital for him so that he could enlarge his factory. Now almost the only business he does is to make nails and tacks for the United Company. That plant is an entirely distinct 798 factory under distinct management. We sell those tacks to anybody who wants them, and we don't require our lessees of lasting machines to take our tacks. It is simply a convenience.

In a similar way we gradually extended into other fields like eyelets and brushes.

I drew the Peabody contract for an agency in Australia, plaintiff's Exhibit 189. (Record p. 2.)

Q. May I ask your attention to the recital upon which the United States relies:

"Whereas the United Company has acquired control of the boot and shoe and leather working machinery made by the following named corporations—

"And then it names the constituent companies—

"and contemplates acquiring the control of the other lines of boot and shoe and leather working machinery and boot and shoe findings except leather linings, lasts, and finished boots and shoes."

What was the occasion of putting that statement into that agreement, Mr. Howe?

A. It should be understood that Peabody & Company were commission merchants in shoe machinery and in shoe findings in Australia, and they wanted an assurance that we should give them enough business to warrant their entering into a contract. It was therefore recited herein, what was true, that we had acquired control of the business of the corporations therein named. Peabody & Company recognized these corporations, or the manufactures in which they were engaged, by their names. We had then in mind the purchase of some other lines of shoe machinery and findings, and this would tend to increase the business of Peabody & Company in Australia.

Q. What other lines had you in mind?

A. I had in mind especially blackings, cements, and stains which Peabody & Company had previously had difficulty in supplying themselves with.

Q. That recital is understood by the United States to mean that you had in mind the acquiring of all shoe machinery and findings and supplies, or substantially all?

A. There was no such intention.

That paper was not drafted in accordance with directions of the directors or president of the United Company, and that recital was simply my own draft in connection with Mr. Peabody and one or two of our experts or department managers, whom I don't remember.

Cross-examination:

I testified that there was considerable litigation between the Goodyear Company and the Eppler Company prior to the formation of the United Company. In suit No. 1007, Goodyear Shoe Machinery Company *v.* Eppler Welt Machine Company, I find on referring to the bill of complaint that it charged infringement by a welt beating machine. That suit was filed March 26, 1898. I do not recall whether any testimony was taken, and I don't know that either the papers in the case, which have been handed to me, or the docket would show that, because the
799 testimony might have been taken before an examiner and not returned into court. There might not be any record of the appointment of an examiner because the practice in those days, which was rather loose, was to agree upon an examiner without any appointment by the court. I can not tell from these papers whether any testimony was taken or not, but I can easily get the files from my office. I think very likely no testimony was taken and that is my best recollection. That suit was pending at the time the United Company acquired the Eppler Company.

In suit No. 248, Goodyear Shoe Machinery Company *v.* Eppler Welt Machine Company, filed on April 11, 1892, the Eppler welt machine was charged as utilizing in its operation the method of forming chain stitches of Briggs patent No. 461,793. I think testimony was taken in that suit but that the case was never brought to final hearing on account of the formation of the United Company. At that time the suit had been pending seven years. I don't know that the Briggs patent was ever sustained except in consent decrees. In one case after we had argued a motion for a preliminary injunction the judge held the case for fourteen or fifteen months, and in the meantime the defendants

had lost so much money that they sold out to the United Company, and I was obliged to tell the judge that it was a moot case and that he need not decide the motion.

I think testimony was being taken in the suit on the Briggs patent against the Eppler machine. We had half a dozen suits in nearly all of which testimony was being taken with the exception of the last suit, on the welt beater, in which I think we had not got around to take testimony.

Suit No. 847, Goodyear Shoe Machinery Company *v.* M. N. Arnold et al., was brought on a French and Meyer patent for an improvement in shuttles, which was embodied in the Eppler outsole stitcher. That had nothing to do with the welt sewing machine. That bill was filed January 28, 1897, and I think testimony had been taken in that suit. I am not sure.

800 Two other suits, No. 846, against William H. Stacey et al., and No. 845, against George E. Keith, were brought on the same patent on January 28, 1897. Both suits were pending when the Eppler Company was acquired. I don't remember whether testimony was taken in all these suits. Testimony was undoubtedly taken in one of the suits on that patent, and by agreement of counsel the other suits were to abide the decision in that one.

In suit No. 807, Goodyear Shoe Machinery Company v. Charles A. Eaton, the Eppler rounding and channeling machine was charged to be an infringement of the patent sued upon. That bill was filed November 20, 1896, and testimony was taken and is on file. That suit was pending when the Eppler Company was acquired.

Suit No. 806, John B. Hadaway and Goodyear Shoe Machinery Company v. Charles A. Eaton, was brought upon the Hadaway patent for a stitch separating and indenting machine. Testimony was taken in that case and is filed with the papers.

Excepting the suit under the Briggs patent on the welting machine and three suits on the outsole stitcher under the patent on the improvement in shuttles, all of these suits related to auxiliary machines. The three suits on the outsole stitcher were based on the same patent.

It is true that Mr. Winslow and I first got together with respect to the Goodyear Company and the Consolidated & McKay Lasting Machine Company, and that at that time we did not consider taking in the McKay Shoe Machinery Company or the Eppler Welt Machine Company. The final agreement was reached at a meeting in New York in the middle or latter part of January, 1899, which was attended by Messrs. William Barbour, John H.

Hanan, S. W. Winslow, George W. Brown, and their attorney, William H. Coolidge, and myself. At that meeting we determined to combine only the Goodyear and Consolidated & McKay Companies; that is, we determined to organize the United Company and to acquire as much of the stock of those two companies as we could, agreeing to exchange our own stock for stock of the United Company.

801 As to my testimony on direct examination that there was some question in my mind whether we could operate our factories and agencies by agreement unless we brought the two companies together into one company, that was merely an impression which I had early in my discussions with Mr. Winslow. I think that it was that impression which led to the formation of the United Company instead of carrying out the matter in the other way. I think it was under my advice.

Prior to the formation of the United Company the Goodyear Company was putting out the Ideal laster, but was not selling it; it never sold its machines.

At that time Mr. Barbour was a stockholder and director of the Goodyear Company. Neither Mr. O. E. Lewis nor Mr. Walter Shaw was present at the meeting in New York. As to whether I attended any meetings where Mr. Lewis and Mr. Shaw were present: After the company was organized Mr. Lewis, who was a vice president, was frequently present, but I don't remember that Walter Shaw was present at any meeting.

At the meeting in New York it was decided to take out a charter for the United Company and we determined upon the name, the amount of the capital stock, as to its division into preferred stock and common stock, and as to what the preferences should be for the preferred stock. We also settled the exact amount of the United Company stock which should be allotted for each share of Goodyear stock and each share of the stock of the Lasting Machine Company.

At that meeting nothing was said about acquiring the Eppler Company; nothing at all. It was agreed that the Goodyear Shoe Machinery Company of Canada, which was almost entirely owned by Mr. Barbour, should be taken in for $225,000 in stock of the United Company at par.

It was on the seventh day of February, 1899, on which the charter for the United Company was taken out. As to whether any arrangement had then been made with a view to taking over the Eppler Company, I am not sure whether the purchase of the Eppler Company was considered just before or just after that.

Referring to plaintiff's Exhibit 152, that refreshes my recollection and the purchase of the Eppler Company must have been made before the actual grant of the charter.

802 The Eppler Company was purchased for the United Company, I don't know by whom.. I know that Mr. Barbour, Mr. Hanan, Mr. Winslow, and others, who are referred to as a syndicate in that exhibit, put up the money. They bought it of one man, I don't know who it was and paid cash for it; and for that cash they got stock in the United Company at par.

As to a statement that I made before the State legislature a couple of years ago, as follows:

"The stockholders of the Eppler Machine Company sold out to another shoe manufacturer, from whom subsequently the promoters of the United Shoe Machinery Company bought the stock of that company."

I don't remember who that shoe manufacturer was and I think I didn't know at the time when I made the statement. I don't remember who told me that a shoe manufacturer had bought the stock.

I think Mr. George W. Brown was also in the syndicate, but I don't know. I was not a member of the syndicate. I do not know what was paid for the Eppler Company. I have made some inquiry since this case began, without success. I don't remember whether I ever had any information as to what was paid for it.

As to what is my best judgment as to what was paid for the Eppler Company, I haven't any. As to whether or not as much as $100,000 was paid for that company, I had known the company for eight or nine years and had a general idea of their business, and I should have said that they would not have sold it for $100,000. As to whether they got so much as $500,000 I don't know at all and I have had no success in trying to find out.

I don't know what has become of the records of the Eppler Company. I saw them at the time the directors of the Eppler Company resigned and we elected United Company directors in their place, and I have not seen them since.

There was issued to the syndicate 50,854 shares of preferred stock and 44,962 shares of common stock of the United Company in payment for working capital, to pay floating debts of the constituent companies, to pay for the Goodyear Company of Canada, for the Eppler Company, and for other property, to make cash payments to stockholders, and to cover the expenses of organization of the United Company. After those things

were done a little in excess of $500,000 was left as working capital.

I stated a moment ago that from what I knew of the Eppler Company I did not think they would have accepted $100,000. I don't know how extensive the Eppler Company's business was and my knowledge of it outside of the litigation was nothing but hearsay, their advertisements in the papers. I had seen all of their machines and had examined them carefully. They had a welt-sewing machine and an outsole stitching machine,
803 and for auxiliaries they had a rough rounding and channeling machine, a stitch separator, a welt beater, and welt splitter, a groover and beveler and a bobbin winder, which would be a necessity for the outsole stitcher. Those machines were being used in a number of shoe factories.

After my examination of their machines I considered that their welt-sewing machine was a good machine for making Eppler welts. Their outsole stitcher was inferior in construction to the Goodyear outsole stitcher, and also infringed the Goodyear Company's patent. The welt beater, stitch separator, and the rounder and channeler were not only inferior in construction but they also infringed the Goodyear patents.

I was quite familiar with the shoe machinery trade in 1899. After the United Company was formed and took over the Goodyear and Eppler Companies, it certainly had the greater part of the business in welt-sewing and outsole stitching machines in this country at that time. As to whether I know of any other companies which were putting out welt-sewing and outsole-stitching machines in this country at that time, I remember the Bertrand & Bray Sewing Machine Company which put out a lock-stitch welt-sewing machine and an outsole stitcher. That company was located in Boston, and it was not subsequently acquired by the United Company. I think they are not in business now.

Goodyear had in his early system a chain stitch outsole stitcher which I think he invented, but about 1887 or 1888 that was superseded by the lock-stitch stitcher which had been developed by the Goodyear Company. The Goodyear Company originally covered the entire field of making welt shoes by machinery. The original conception was the making of a welt shoe by machinery imitating the methods of hand workmen. That patent had expired long before the United Company was formed, and before my time, some time in the 80's. The Goodyear Company did not cover the whole field when the United Company was formed. There was nothing to prevent anyone getting up a good welt-sewing machine and a good outsole

stitcher, which would be superior to the Goodyear machines, if they could do it. The patent on the original Goodyear machine had run out long ago. Others were free to use that if they wanted to.

The Eppler welter infringed the Briggs method patent on an invention which accomplished the sewing of a tight seam. That method patent and a machine patent revolutionized the Goodyear Company's business about 1890, and rendered the old Goodyear machines out of date. Everybody wanted the new machine embodying the invention of the Briggs patent. We also brought out at that time the lock stitch rapid outsole stitcher, which was so great an improvement on the 804 chain-stitch outsole stitcher that all those machines went out of use. That machine sewed a good seam and a tight seam but the seam was very objectionable to the eye.

Q. But the Goodyear and the Eppler Companies were both operating in the same field, that is, the machines put out by each company were used for the purpose of making a welt shoe; the Eppler people called theirs the Eppler welt and the Goodyear the Goodyear welt?

A. Well, they were welt shoes, but made different; they were different shoes.

Q. I understand the chain stitch on the Eppler shoe was on the inside of the channel?

A. The Goodyear shoe, as Judge Putnam has pointed out, was the hand-sewed shoe, sewed by machinery. The Eppler welt shoe was a shoe made in a different way, different from what a hand workman would make it.

Q. But they were all known among the trade as the welt machine for making welt shoes?

A. Known in the trade as welt and turn machines—Eppler welt and turn machines. There were also shoes in the trade known as hand welts and mock welts.

As to why the Eppler Company laid their channel under the foot, I presume the reason was that Eppler who invented the machine was an old designer of the Goodyear Company and knew that originally the Goodyear machine laid its chain stitch in the channel of the sole so that it came under the foot. It was a matter of choice. They were not limited to that. The Goodyear and the Eppler were the only two machines manufactured and on the market in this country except this third one that I spoke of.

At that time it was open to anybody to make the earlier types of Goodyear machines. They were out of date, although for

their time they were good machines. Their product was a wearable welt shoe and it was made in large quantities. A shoe of that character had been on the market for a long time and had been accepted; but it had been outgrown by the improved machines, which produced a shoe of very much improved quality.

I think the Eppler welt machine came out from 1890 to 1893 and the Eppler Company was formed shortly after and did business until 1899.

PUTNAM, J. The litigation, then, between the Eppler Company and the Goodyear Company was upon the secondary patents, wasn't it, not upon the fundamental patents?

The WITNESS. Well, it was upon the later patents, of course, which were in existence.

PUTNAM, J. But it didn't relate to the fundamental principle of the art?

The WITNESS. No.

805 When the United Company was formed I don't remember that any outside concerns were manufacturing and putting out lasting machines. There was a thread lasting machine, and there were two or three machines of doubtful value. There was a Preston lasting machine, but they cut no figure in the business. At that time the Consolidated had the McKay & Copeland, the hand method, and the Chase lasting machines. The Continental and Boston lasting machines were really nothing but machines that drove a single tack to hold the upper after the workman had done all the lasting work by hand. I do not know how extensively the Boston machine was used. It was in shops making the cheapest kind of work, and I had no occasion to go into those factories.

The Ideal lasting machine was put out by the Goodyear Company and was developed for and used on women's shoes.

As to whether it could be used on men's shoes, I explained yesterday that the purpose of these different machines slightly overlapped, but as a feat you could use the Ideal laster, which was designed for women's welts, on men's shoes, but that no one would think of doing so unless they were forced to.

As to whether the Ideal laster was actually used on men's work, why I think it may have been in a few instances.

806 Referring to the statement in plaintiff's Exhibit 152 that the United Company had already contracted for more than a majority of the capital stock of eight concerns, "besides stocks in other shoe machinery companies, letters patent and other property," the "other shoe machinery companies" consisted in a company manufacturing an experimental

heeling machine in Newark, New Jersey, and two or three other companies on about the same status. The Newark company had one experimental machine out in the factory of John Hanan in Brooklyn, and all of these other companies were small in capital and were taken into the United Company because they were controlled by some of the promoters of the United Company, and we thought at the time that there was a nucleus for improving and developing a better machine. None of them, except possibly the heeling machine, was competitive with the United Company, and that machine was designed to heel on the last. At that time there was no particularly good machine for doing that which would avoid breaking lasts.

After the United Company was formed the National heeler was on the market. I don't know whether anybody was making them as new machines, but there were large numbers of repaired National heelers that could be purchased by any manufacturer who desired them.

As to metallic machines which were on the market at that time, I remember only the Suffolk Nailing Machine Company, which had a pretty good line of metallic machines.

As to what companies were manufacturing the McKay sewing machine at that time, the Steam Heated Horn Company manufactured them and the Stanley Manufacturing Company at Lawrence made a few, but very few new McKay machines were being manufactured because there were plenty of them around through the country that could be bought in the stores, and manufacturers were shifting to some extent, even then, from McKay sewed work to Goodyear work. Consequently they hadn't the use for their McKay sewing machines and would sell them.

The United Company did not, shortly after it was formed, manufacture McKay sewing machines; and it put them out only as it bought them for some customer that wanted them. The patents on those machines had expired long ago—in 1879 or 1880, I think. Any body could manufacture them.

807 Prior to the formation of the United Company the leases of the Goodyear turn set required the machines to be used exclusively. That provision was not inserted in the full set welt lease. As to whether in the old leases of the Goodyear Company there was a reservation to the lessor to cancel all other leases provided the lessee should not live up to the requirements of a particular lease, the practice of the Goodyear Company did not necessitate any such requirement. All the machines in a large factory would probably be on one lease. Whenever the manufacturer took an additional Goodyear machine it would

be put on the same lease. It was never the practice of the Goodyear Company to put out independent leases as additional machines were added.

Mr. CHOATE. Mr. Gregg, if you will look at clause 10 of Exhibit 3, you will see how they handled that.

Mr. GREGG. Exhibit 4 also refers to it, Mr. Choate.

The WITNESS. I can't tell without looking up when the first change was made in the Goodyear lease after the United Company was formed. Speaking generally, I should say that it was a year and a half, and until that time we used the old Goodyear forms, and leases were made in the name of the Goodyear Company. The first change as I remember it was to substitute the name of the United Company as lessor. As to whether the form of the lease was then changed in any way, I think it may have been by inserting the clause giving the company the right if the lessee defaulted in paying his royalties or committed other serious breach, to cancel all its leases in the different departments and cease doing business with him.

The metallic fastening lease was the occasion for the New England Shoe Manufacturers' Association taking up the lease question with the United Company. That was a restricted lease, which prevented the use of metallic machines with lasting welt sewing, outsole stitching, or heeling machines other than the United Company's. The question of putting out the independent lease was then taken up with the committee.

As to whether that lease contained the provision that for any violation of that lease the lessor might cancel all other leases subsisting between the lessor and lessee, that division between conditions obligatory upon the lessee and the agreements was first put in that lease, as I remember, as a result of a conference between Mr. Storey and myself. For the violation of these obligatory conditions, like, for instance, going into bankruptcy or not paying his rent or doing other acts which amounted to cheating, we could cease doing business with that lessee; that is, the clause gave us the power to cancel all his leases. If, however, it was an agreement not obligatory upon him, not to put in other machines, and he did put in other machines, we had the option to take out our metallic machines.

808 The reason for increasing the price of the metallic material 10 per cent above the price to manufacturers who had restricted leases was due partly to the increase in the price of material and partly to a feeling that we ought to have more money in case factories under the independent lease had no other machinery of ours than one or two metallic machines.

In other words, where we had brought out the restricted lease we thought by distributing the business over the three or four departments we could stand the rise in copper, but if the machines were to go out independent we ought to have some more compensation if we had to render service to isolated machines.

Q. Then the manufacturer who took the restricted lease with respect to the machines named therein, or referred to, agreed to deal with your company exclusively?

A. As to those machines, subject to the penalty of having his machines taken out if he did not deal with us—subject to having some of his machines taken out if he did not deal with us.

I stated on direct examination that the initial premium of the Goodyear automatic leveler was reduced, after the United Company was formed, from $500 to $350 or $300. The only competitive sole leveler had come in years before—before the United Company was formed. At the time of that reduction there was no other company putting out levelling machines The so-called Judd leveler, manufactured by Mr. Cilley, was in existence, but I think it was doing no business at the time that reduction was made.

It was almost immediately after the United Company was formed and after we acquired possession of the Gem Insole Company that we decided to turn back to the manufacturer the royalty on the Gem insole machine. As to why the Gem insole machine was not put in as an auxiliary machine rather than putting it out on a separate lease, I don't know unless it was because a lot of Gem insole machinery was out on leases of the Gem Insole Company and it was simpler to keep up those old leases and return the royalty to the lessees.

The rebate of the royalty was given to all lessees who complied with the conditions of the resolution of January 31, 1900. Under the terms of that resolution any concerns not using our machines exclusively did not get the rebate and were not entitled to it.

At the time we decided to grant this rebate there was no other insole machinery on the market. I have heard of the Sleeper inner sole. There may have been one or two factories trying it at that time. Before that it had been tried out and abandoned. The machine did not in any way do the work of the Gem insole machine. The machine was not then being manufactured at all. I think there were two or three of them out which had been made by Sleeper.

Neither the Suffolk Nailing Machine Company nor the Steam Heated Horn Company, about which I have previously testified, was acquired by the United Company.

I happen to know that there is one Eppler machine in the factory of the Studebaker Company, being used for sewing automobile tops. It is possible that some Eppler machines
809 are now in use in Brockton. There were some in use at the time of the filing of the petition in this suit, but the only company that I knew was using them was the F. F. Field Company. I do not know whether they used both the welters and stitchers.

The only conference regarding the Plant matter at which Mr. Plant was present which I attended was the one at Mr. Whipple's office in the latter part of June, 1910. I was informed of all the conferences that Mr. Winslow and Mr. Endicott had, but was not personally present. I attended the meetings of our experts, counsel, and directors at the Algonquin Club. Mr. Winslow reported to me the next day about his first conference with Mr. Plant at Mr. Endicott's house. There was no action possible on that report.

According to my memorandum, it was on September 14, 1910, that Mr. Winslow and I went to the Thomas G. Plant shoe factory with a number of our experts, who examined the machines. Those who went with us, so far as I recall, were Mr. John H. Connor, Mr. Alley, Mr. Cox, Mr. Mayo, Mr. Benjamin Phillips, Mr. N. W. Howard. We all met at the Algonquin that evening and discussed what we saw there.

This examination of the machines at the Plant factory was arranged by Mr. Winslow, Mr. Endicott, Mr. Plant, and Mr. Herrick. It was agreed by Mr. Winslow that he would bring no infringement suits against Plant or the Plant Company for three weeks, except suits in which bills of complaint had been executed. A list of those suits was to be given to Mr. Emery, Mr. Plant's counsel. I have not a list of those suits, but purely from recollection I think there were about ten or twelve for which bills had been executed but had not been filed.

Up to that time we had not put up any money. Mr. Plant required that we should put up a million dollars if we could make an examination within a short time, and a million and a half if we were to take any longer. We declined to do that.

On the night of September 14th we all stayed at the Algonquin Club until one o'clock the next morning, discussing the various machines. Neither Mr. Plant nor any representative of his was present at that meeting. The experts spent the whole of the next day at the Plant shoe factory in further examination of the machines.

810 Q. Now, at that time did you know that some of the shoe manufacturers were here from the West?

A. I did not.

Q. You had not heard of that?

A. I had not heard of it. I didn't hear of that until after we had paid Plant $500,000. I think it was the 22d of September that I heard of it. I was told of their being here and told that Plant took them to Lynn and Lawrence to examine what he was doing with reference to his machines.

The Winkley patent No. 700,279 dated May 20 1902, plaintiff's Exhibit 268 (a physical exhibit), which the Plant welt machine infringed, covered an attachment for holding the welt at the beginning of the sewing operation and was for the purpose of saving the welt and thread so that there would not be the loss of the welt which resulted when the operator held it by hand. Plant had improved upon it and made a much more efficient operative device, but he nevertheless embodied the invention of Winkley's patent. We had not put out the attachment covered by the Winkley patent. We had only used it experimentally. It was not on any machines that were leased. Winkley was in the employ of the United Company at the time he made that invention. At the time of the Plant purchase we had put out no device whatever for holding the welt; it was simply in an experimental stage.

I examined the report made by Mr. Mayo and Mr. Warren on November 26, 1910, with respect to the Plant machines, about the time the report was made. The cuts on page 51 of plaintiff's Exhibit 267, which purport to show the model G welter and the Plant welter, appear to show those machines.

811 (Mr. Gregg then read the statement beginning on page 51 of plaintiff's Exhibit 267:

"PLANT WELTER.

"This machine is similar to the Goodyear welt and turn machine in regard to the stitch-handling devices.

"It differs from the old machine in a feeding welt guide and the addition of a back gauge which is necessitated by the feeding welt guide.

"The machine, so far as the quality of work goes, should do as good work as the old Goodyear welt and turn machine, but we think it is inferior to either our model G or model K welters.

"The mechanisms of this machine are light, and not as well designed and constructed as the mechanisms of our two new welters; but there are several important additions to this

machine which make it very valuable to the manufacturer, and, while we are of the opinion that the Plant welter as it stands should not be adopted in place of our new welters, we believe that these important devices referred to should be incorporated in our latest machine.

"The new devices are as follows:

"A welt and thread holding and cutting device.

"By this device the operator, after he has finished welting the shoe, pulls the shoe toward his left hand and presses the foot treadle, thereby cutting off the thread and welt, and holding the welt and thread in position to take the first stitch in the next shoe. This operation makes a considerable saving in time to the operator, and is much neater, owing to the fact the the operator does not handle the waxed thread. It also saves welting as the operator always starts with the same amount of welting through the welt guide. In our old type of machine the operator has a varying amount of welting through the welt guide and more than is necessary for the shoe in order to hold the end with the fingers while taking first stitch. Our later machines have a welt-holding device that obviates this difficulty, if the operator will use it.")

The WITNESS. I suppose the statement "Our later machines have a welt-holding device that obviates this difficulty, if the operator will use it," refers to this Winkley device, but I am not aware that machines with that device on had ever been leased to shoe manufacturers; that may mean the machines that they were then experimenting with in the factory.

BROWN, J. What do you call a fundamental patent, Mr. Gregg?

Mr. GREGG. A fundamental patent, as I understand it, is a patent that relates to the basic parts of the machine.

BROWN, J. Well, you take the Goodyear. That went out of existence by virtue of improvements. The improvements made the new machine drive the old one entirely out of the field.

Mr. GREGG. Yes.

BROWN, J. Well, now, do you call that improvement a fundamental patent, or do you call the Goodyear the fundamental patent?

812 Mr. GREGG. I should say the old Goodyear would be the fundamental patent.

BROWN, J. The improvement which may have driven all the old machines out of the field you would not designate as the fundamental patent although it was fundamental in the business situation?

Mr. GREGG. No; I should not designate that as a fundamental patent.

BROWN, J. It is a pretty indefinite term to use. I don't think it assists us very much.

Mr. GREGG. I believe Mr. Howe testified yesterday at the time the Eppler Company was acquired the litigation did not then relate to fundamental patents, and I didn't know whether he had in mind——

BROWN, J. Well, you can inquire as to his meaning of fundamental patents.

Q. Can you give us any light on that, Mr. Howe?

A. I would like to have you read my testimony of yesterday. I don't remember saying that. Perhaps I did.

Mr. CHOATE. Page Judge Putnam used the language.

Mr. GREGG. On page , Mr. Howe, his Honor Judge Putnam said:

"The litigation, then, between the Eppler Company and the Goodyear Company was upon the secondary patents, wasn't it, not upon the fundamental patents?

"The WITNESS. Well, it was upon the later patents—patents, of course, which were in existence.

"PUTNAM, J. But it didn't relate to the fundamental principle of the art?

"The WITNESS. No."

The WITNESS. Well, I meant by that indirect use of the word "fundamental" that they were not the first patents that were taken out on that class of machines. I think I explained that the old Goodyear patents had expired long ago. And then we obtained fresh patents on very valuable improvements. And, answering your last question, some of the suits that were brought against Plant were upon these later patents which involved fully as valuable improvements to the machines as the earlier patents which had expired.

813 We had two meetings at the Algonquin Club, on September 14th and 15th. On September 16th Messrs. Winslow, Endicott, and Plant were at the Algonquin in a private room. On September 20th we had a conference at the United Company's offices at which Messrs. Winslow, Brown, Endicott, Connor, Willson, Keith, Herrick, and I were present. After that meeting Mr. Winslow and Mr. Herrick went to the Puritan Club with Mr. Plant and his counsel, Mr. Carr. It was at that meeting that Mr. Plant made the first proposition to Mr. Winslow which he said he would accept if he could get the approval of his executive committee.

I know about the election of Mr. Endicott as a director. Referring to a memorandum which I prepared myself at the time, on June 30th Mr. Endicott made the proposition that he would buy some stock in the United Company and become a director. He made that proposition to me at my house in Marblehead, in Mr. Winslow's presence. Mr. Endicott said that after being assured of an election he would serve with Mr. Keith and Mr. Hanan on a committee to inspect and report on Plant's property, with the assistance of his men Tobin and Johnson, who were superintendents of his factories at Endicott, New York; that if Plant would not consent the negotiations were off and that he, Endicott, would play with us thereafter; but that he believed Plant would consent.

I understood that Mr. Endicott had been offered a substantial commission if he succeeded in getting the United Company to buy Plant's inventions. He was extremely displeased that Plant would not allow his machines to be examined by experts. At the time that Mr. Endicott made his proposition to become a director the negotiations were all broken off by Mr. Winslow, who declined to have anything to do with any proposition unless he could have the machines examined by our experts and demonstrate that they would be of value to the United Company and its lessees. Then this plan occurred to Mr. Endicott. He submitted it to Mr. Winslow, and then they came down to Marblehead and submitted it to me.

814 Mr. Endicott stated that his being elected a director would show Mr. Plant that he had broken off any proposition to act as broker for him, and that he was then with the United Company; and that he felt Mr. Plant would give him an opportunity in connection ~~with~~ Messrs. Keith and Hanan as shoe manufacturers, to examine Plant's machines.

That was done later. On July 5th Messrs. Keith, Hanan, Endicott, Johnson, and Tobin spent the day in Mr. Plant's factory, and dined at the Algonquin that evening with Mr. Winslow and other gentlemen.

Along in the spring and summer of 1910 a number of advertisements appeared in the Boston newspapers with respect to the Plant machines.

Q. Advertisements of the machines, or what were they, if you recall?

A. As I remember, they were principally advertisements containing the opinions of counsel to the effect that the United Shoe Machinery Company was a trust, that its leases constituted restraint of trade. They were advertisements calculated to "bear" the stock of the United Shoe.

In the latter part of July a suit was brought against the Thomas G. Plant Company, and Thomas G. Plant individually, in the Supreme Judicial Court of Massachusetts, to recover royalties for the period during which our machines had been set aside and Plant had been using his own machines. I was in consultation in connection with that suit. I think we also asked for an injunction against the Thomas G. Plant Company, restraining it from further use of Plant's machines. The record will show.

I attended the meeting when the agreement was finally signed with Plant. That was held nearly all day and until late in the morning of the next day, at the offices of Fish, Richardson, Herrick & Neave. Mr. Plant came in about three o'clock in the morning. The draft agreement was discussed, paragraph by paragraph, with Mr. Plant and his counsel. He and Mr. Winslow signed the agreement about 4.30 a. m.

I heard on the morning of that day that the western manufacturers were here and that they were in conference with Plant at the Touraine, and that he took them to ride to Lynn and Lawrence. But the United Company had paid $500,000 before that. That payment was early on the morning of the 22d, and the papers were signed at half-past four on the morning of the 23d.

When Mr. Plant met us on the evening of the 22d I think he came from the office of his counsel, Mr. F. L. Emery. My
815 recollection is that Mr. Carr, his counsel, got very uneasy during the early part of the evening at Mr. Plant's not coming around and said he was going to Mr. Emery's office, and when he came back Mr. Plant was with him. I don't know whether Mr. Plant had just come from a meeting with the shoe manufacturers.

Most of Plants machines followed the old models very closely, with the addition of such improvements as he had made. I don't know to what extent, if any, Plant's machines are being used in the Plant factory now. The Plant machines had never been put out to shoe manufacturers; they were altogether too light and had to be redesigned. Whether we have got all of the Plant machines out of the Plant factory as yet, I don't know. I do know that we have put in new machines embodying Plant's improvements as fast as we could get them out.

Direct examination resumed:

The Plant machines were designed for doing Plant's work, the making of women's fine shoes. Not only the old parts which were found in former Goodyear machines, but also the additional parts which he had put on to embody his improvements, were made too light to stand commercial use for making men's work. This defect existed in nearly all his machines.

To redesign and strengthen the machines would require first the making of working drawings and then changes in the patterns and tools for making the machines and making dies for parts that were to be drop-forged, or else make the first machines by hand work in order to test them; it would require going back to first principles.

Mr. Plant's machines, as set up in the Plant Company factory, were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts. If our company, the United Company, were to use them they would want to be standardized and developed for use on both men's work and women's work.

In regard to page 51 of plaintiff's Exhibit 267, to which my attention was called on cross-examination, the cuts on that page illustrate the lightness of Mr. Plant's construction as compared with the United machine. My criticism was of the heads of the machines, the operating parts, not the standards, although I think the standards were also too light. He attempted to adopt a uniform style of standards for all his machines.

816 As to Plant's improvements on the welter, he had a device which both held and cut the welt, and in connection with it there was a welt-measuring device; and to make that improvement successfully operative on the machines he had to have a starting and stopping motion.

The United Company development had only progressed as far as a welt-holding device. We had no cutting-off device and no stop motion, and we had no measuring device except as incidental to the holding device, and that holding device was in the experimental stage.

I had nothing to do with the preparation of the circular which was sent to the stockholders of the McKay Company. The three circulars were sent out independently. The Goodyear circular, dated February 8, 1899, went out first, the Consolidated & McKay circular, dated February 11, 1899, went out two or three days later, and the McKay circular, dated February 15, 1899, was prepared still later. Mr. Brooks and Mr. Winslow had copies of the Goodyear circular which I drew, but I had nothing to do with the other circulars. Those circulars were intended as private communications by the directors of the several companies to their respective stockholders. The dates of those circulars were approximately the dates when they were prepared.

The Boston lasting machine had nothing to do with pulling the upper up over the last. It only drove a tack to hold the leather which the hand laster had pulled up over the last. The machine

relieved the hand operator of carrying the tacks in his mouth, which was the practice, and of driving them with a hammer.

The same syndicate purchased the Eppler stock and underwrote some of the shares of the United Company to supply money for the working capital, floating debts, expenses of organization of the United Company, and several other things. It was all covered in one underwriting.

Referring to clause 10 of plaintiff's Exhibit 3, that clause allowed the Goodyear Company to require of the lessee that the covenants in that lease should apply to any additional machines leased and to the inventions which should be embodied in them, and prior to 1899 when a man, who had Goodyear machines, desired to obtain additional machines it was the practice to insert the numbers of those machines against the name of the machine in the lease which he then had, as indicated in the schedule of machines near the beginning of that lease,
817 Exhibit 3. The company inserted the number in the lease and the lessee was notified to insert the number in his duplicate copy. That was the universal practice of the Goodyear Company. The effect was that if the lessee failed in the performance of his obligations as to any one machine it would terminate the leases which covered all the machines. This practice applied to all the Goodyear Company's leases.

After 1899 the United Company gradually adopted the practice of issuing a separate lease for each machine that was taken. If a man having a dozen Goodyear machines took them at different times he would have a dozen different leases. If he took them all at once the numbers would be inserted in the same lease.

Referring to Mr. Plant, my memorandum made the next morning says that about eight o'clock on the evening of the closing of the Plant transaction, Mr. Carr was apparently very nervous at not hearing from Mr. Plant, who had promised to call him at 5.00 p. m. Mr. Carr went to Mr. Emery's office, and came back about 2.00 a. m. with Emery, Plant, and Hains and occupied Mr. Herrick's office, where they studied the agreement as far as it was drawn. I was there all the evening. The first I saw of Mr. Plant was when he came over with Mr. Emery and Mr. Carr. Two or three of us were in Mr. Fish's private office. Mr. Winslow, Mr. Connor, Mr. Endicott, and some others were in Mr. Salinger's office. Mr. Plant might have been in some other office before he came back with Mr. Carr without my knowing he was there, but I do not think he was.

Referring to my previous testimony as to the early state of the art relating to the Goodyear welt and turn machine, and then the invention of the Briggs method, I am asked to state a little more

in detail how that machine developed into what it was in 1899. About 1888 the patents which the Goodyear Company, then a Connecticut corporation, had on its welt-sewing machine were about to expire. At that time it had no outsole stitcher, except a machine which sewed a chain stitch and which was objectionable to shoe manufacturers, retailers, and to wearers of shoes, because the bulky chain would show on the outsole when the shoe was finished, or if the seam were laid in the channel, the channel would soon wear off and show the chain of the stitch. For that reason the Goodyear Company had never succeeded in getting its welt machines and outsole stitchers used in making welted shoes to any great extent. That applied to the making of welt shoes by machinery.

BROWN, J. As a commercal proposition, couldn't they put out the welter alone?

The WITNESS. They did, but not to a great extent. If they did, the welter sewed the inseam, and the outsole stitch was laid by hand, or by a straight-needle machine, which necessitated taking the shoe off the last, which is an undesirable step in the Goodyear shoe.

Their principal business was derived from their turn sewing machine, of which they had a great many out. In 1888 the Briggs method of stitching the chain stitch began to be developed, and French and Meyer brought out a machine embodying that method. That revolutionized the business of the Goodyear Company, for the reason that it not only sewed a tight seam in all classes of insoles, but it made use of thinner, less expensive insoles than had been possible to use with their old welt machine.

818 The Briggs patent was on a method which could be performed by an awl and by hand, and the French and Meyer patent was on a machine carrying out that method. That revolutionized the art with respect to the Goodyear machine because it would sew a tight seam, which the old method did not.

As to the importance of a tight seam, it is very important to have the upper sewed to the insole and welt by a seam which will not permit the shoe to "grin," as they say in the trade; that is, so that the water won't reach in the outsole, and so that it won't leak by; furthermore, so that it won't rip. The old machine was always defective in that respect, particularly in sewing around the toe of the shoe, and it was not infrequently the case that the shoe "grinned" and would have to be patched by a cobbler.

At an early date, prior to my connection with the Goodyear Company, its welt machines laid the chain stitch in the channel of the insole, following the practice which Andrew Eppler, who

was then an employee of the company, subsequently used in the Eppler welt machine. The Goodyear Company abandoned that method for the reason that the chain was in the channel of the insole. Then the Goodyear method of laying the chain on the welt was adopted, and subsequently the Briggs method was invented, and the French and Meyer machine which practiced that method was invented.

At about the same time the Goodyear Company developed the lock-stitch sewing machine for sewing the outsoles. That machine utilized the curved needle and awl, and could sew a lock-stitch seam on the outsole while the shoe was on the last. That made welt shoes commercially successful.

After the French and Meyer welt-sewing machine, practising the Briggs method, and the lock-stitch stitcher came out the Goodyear Company's welt-shoe business developed very rapidly. As an illustration, Hanan & Sons, in New York, who were then the largest manufacturers of men's fine shoes, about 1890, made 90 per cent hand-sewed shoes and 10 per cent machine sewed. After these machines were brought out Hanan & Sons reversed those figures. Other manufacturers, following their lead, rushed in to get our machines as rapidly as they could.

Up to that time the system of making welt shoes by machinery had hardly got going. The Goodyear Company derived almost its entire income from turn shoes. The reason why the straight-needle machine, which was sometimes used to sew the outsole, could not be used when the shoe was on the last was that the machine could not get into the shank of the shoe. That required a curved-needle machine. Until that was developed and the the two machines put together the Goodyear system was not commercially a success as regards welt shoes.

819 In 1899 the Briggs method patent and the patents on the welt-sewing machine and on the lock-stitch stitcher had several years to run.

I drew the contract with Bresnahan for the transfer of the property of the Boston Shoe Tool Company. As to the covenant in article 6 of that agreement, the reason of that covenant was that Mr. Bresnahan was expected to retire from the Boston Shoe Tool Company. The United Company had been buying tools both of the Boston Shoe Tool Company, which was Mr. Bresnahan's company, and also of another company situated here in Boston. It was desirable for the United Company to have a manufacture of these various edge trimmers, forepart and shank cutters, and so forth, in order to supply its customers, and also, if Bresnahan was going to retire from the Boston Shoe Tool Com-

pany, they wanted a capable manager or a superintendent. It was expected when this covenant was put in here that Mr. Bresnahan could be of service in buying out this other company, which was engaged in a smaller business, and securing for the United Company the service of a Mr. Loomer and a Mr. Perkins as men to manage the business.

820 DECEMBER 18, 1913.

ALICE THATCHER HEWITT, witness for defendants.

I live in Brockton and my husband's name is Joseph. In 1899, prior to my marriage, I was employed by the United Company as a clerk in the office at Brockton, and I stayed with the company until January, 1901.

My work at Brockton was keeping records having to do with the service given to the machines. I kept all the records of all the calls that came in and all the calls that the men answered and the work that they did, all the parts of machinery that were sent out from the Brockton office, and everything of that sort. As to whether I had anything to do with keeping track of the service given on the Eppler machines, I did.

With reference to the letter of defendants' Exhibit 45 (Record, p.), dated Springfield, Massachusetts, July 31, 1899, and signed by R. H. Long, which says:

"Please send us man at once to teach operator on welter. We also need agent to fix up stitcher at once. We don't expect to do anything in Belchertown at present, owing to certain circumstances. Will call on you when next in Boston,"

refreshing my recollection by reference to my records, I find that a man named Damon was sent to Mr. Long's factory on August 1st in response to that call.

PUTNAM, J. What is the object of this, Mr. Choate?

Mr. CHOATE. R. H. Long, a witness for the United States, testified that after the United Company was organized and owned the Eppler Company they would not give service with reference to Eppler machines, and a number of his requests were put in, which we want to supplement by showing when the service was given.

The WITNESS. Referring to a letter from Mr. Long, dated April 13, 1899, Springfield, Massachusetts:

"GOODYEAR SHOE MACHINERY COMPANY, *Boston, Mass.*

"GENTLEMEN: Please send us an agent to be here Monday and teach operator on the Eppler welter. Would like to have him stay three or four days.

"Please send us two gib rings for Eppler stitcher machine at once,"

the records show that a man was sent on the 17th, and that he was there on the 17th, 18th, 20th, 21st, 25th, 26th, 27th, 28th, and 29th. The records do not give his name.

Cross-examination:

I am testifying wholly from the records which I have here, and which I made contemporaneously with the acts themselves.

821 DECEMBER 18, 1913.

WALTER S. BATCHELDER, witness for defendants.

I live in Melrose Highlands, and I work as a bookkeeper for N. Ward Company. I was at one time employed by the United Company and had something to do with the billing of parts which were sent out for the Eppler welt machine.

The books before me are the sales record of parts, which were kept by me. When parts were sent to customers the return was made to the office and the bills were made out in these books, the carbon copy being retained in this book.

Referring to defendants' Exhibit 48, a letter from the R. H. Long Company, dated Springfield, Mass., February 13, 1899, reading:

"EPPLER WELT MACHINE COMPANY, *Boston.*

"GENTLEMEN: Please send us six awls for Eppler welter for use with No. 41 needles; also four needle guards for No. 41 needles,"

the memorandum on the bottom of the letter reading "Telephoned factory Feb. 15, 1899, W. S. B.," is in my handwriting. The order in that letter was filled and the goods were billed on February 16. The memorandum shows that the order was received on February 15 and was telephoned by me to the factory on that date. It was billed the next day.

The letter of defendants' Exhibit 49, dated February 17, 1899, was received on February 17, according to the memorandum which I made. The order was billed on February 20.

The letter of defendants' Exhibit 50, dated Springfield, February 21, 1899, was received on February 23, and was filled on the same day.

The letter of defendants' Exhibit 51, dated Springfield, February 22, 1899, was received on February 23, and it was billed on February 25.

As to the significance of my expression "billed," I can't recollect now whether we used the shipping date for our billing date or the day that we made out the bill. The goods were shipped either on the date mentioned or prior to that date; not later, at any rate, than the date I have mentioned.

822 Referring to the letter of defendants' Exhibit 52, dated Springfield, February 28, reading:

"Please send by return mail twenty-five No. 47 awls, fifty No. 41 welt needles, fifty No. 41 stitching needles,"

those goods were billed on March 4, four days later. They went by mail. I can't tell whether it was by return mail.

The letter of defendants' Exhibit 53, dated March 1, 1899, reading:

"Please send by return mail six gib ring screws No. 413 N. S.,"

was received on March 2, and was billed on March 4.

The letter of defendants' Exhibit 54, dated March 13, reading:

"Please send by return mail fifty No. 47 stitching needles, fifty No. 41 welt needles,"

was received on March 14, and the goods were billed on March 20.

The letter of Exhibit 55, dated March 18, 1899, reading:

"Please send us by return mail six Gem channeling knives, No. 7, for Eppler channeler,"

was received on March 20, and it was billed on March 21. The goods were sent by mail. I can tell that because when we shipped by mail we charged postage, and that was always indicated on the bill.

The letter of Exhibit 56 reading:

"Please send by return mail one hundred No. 41 welt needles,"

is not dated at all. It was received on April 7 and the goods were billed on April 8. They went by mail.

The letter of Exhibit 57 was received on April 13. I telephoned the order to the factory, and it was billed on April 15.

The letter of Exhibit 58, dated April 14, 1899, reads as follows:

"Please send to us one belt for rough rounder, six knives for rough rounder for Eppler machine. We need this at once. Please rush."

That was received April 14. I telephoned to our factory at South Boston and they were shipped from South Boston by express, and were billed on April 15.

It was my practice when I received one of these orders to telephone the factory at South Boston. The goods would be shipped from South Boston, direct from the factory, and I would get some notice that they were shipped and would send the bill.

823 The order of the letter of Exhibit 59, dated April 15, 1899, reads:

"Enclosed find channel knives. The knives wanted are for rough rounder."

We shipped the rough rounding knives by mail, and they were billed on April 18.

824 The order of Exhibit 60, dated April 22, was received on April 24, and was billed on April 25. The goods went by mail.

These orders all related to parts for the Eppler machines.

The order of Exhibit 61 was received April 26 and I telephoned the order to the factory. The goods went by mail, being billed on April 28. The order of Exhibit 62, dated May 2, 1899, was received on May 3, and the goods were shipped by American Express. They were billed on May 4.

I don't find Exhibit 63.

The order dated November 3, 1899, Exhibit 64, was billed on November 6.

The order of November 22, 1899, Exhibit 65, was received November 23, and the goods were billed on November 25.

The order of November 23, 1899, Exhibit 66, was received on November 24, and was billed on November 25.

The order of Exhibit 67, dated June 4, 1900, was received June 5. The gears ordered were shipped by mail, and they were billed on June 6. I didn't have anything to do with the sending of the men asked for in that letter.

Cross-examination:

Practically all of these orders relate to awls, needles, and knives, but there were some other parts there—such as gears and rings. As to the request in the last letter that a man be sent to fix a machine, that was not within my jurisdiction.

825 DECEMBER 18, 1913.

FREDERICK G. KING, witness for defendants.

I live in Boston, and I am manager of the Goodyear department of the United Company. I have been with the United Company since its organization, and was with the Goodyear Company a little while before the United was formed.

I have made a search for records about the response to calls from R. H. Long since June, 1900. The calls were all kept in what is known as a call book, but I can not find the books for the dates since that time.

As to Eppler machines of all kinds, whenever a call has been made for a machine we have supplied it, and we have supplied all calls and demands for machine parts and service with reasonable promptness; at once, or as soon as we could do it. Mrs. Hewitt who has testified was in charge of all the calls after the Eppler office had amalgamated with the Goodyear office. We

did not discriminate in any way against Eppler users who wanted service for their machines or repair parts, needles or awls. Anything required for the proper maintenance of the machine was supplied at once or as soon as it was possible to do so.

Eppler machines were furnished by the United Company from 1899 to 1904, inclusive, as frequently as they were asked for, and to everyone who asked for them. We did not discriminate in any way against the use or the users of Eppler machines.

I know John E. Williams, who has testified for the petitioner. I had conversation with him with reference to machines in his factory. The Excelsior Shoe Company, of which Mr. Williams was the president and general manager, were making a show with a McKay sewed slip sole to which an outer sole was attached by a Goodyear stitcher which had been leased to them for the manufacture of Goodyear welt shoes. They had been granted permission to use this machine for making that special shoe, and in connection with it they were using machines of the pulling-over lasting, metallic and heeling departments, and other ma-
826 chines under the restricted form of lease. He placed in his factory a Union lock-stitch stitching machine which he said was for experimental trial.

Mr. Williams came to Boston and told me he was in doubt whether he had the right to use the machines; that he was operating under the restricted form of leases with this outside stitching machine, and he asked me the question if he was violating the leases in doing that. I told him that in the manner in which he was making the shoe and using our machines, operating under the leases that he was, it was a violation of the leases. He then asked if we would furnish him with machines such as he would need to use with his outside stitching machines, and I told him we would, and when he was ready to discuss that question we would take it up with him. Mr. Williams was in Boston at this time for two or three days. He called on me the following day, and he called on me again on the 13th of November, as I recollect it, 1912, and stated that he thought that our position was legally and morally right, considering the advantages he obtained from the use of our machines, and that he proposed to use them exclusively.

He asked me to give him a letter which he could show to his partners, defining our interpretation of the leases; and I wrote and handed to Mr. Williams the letter of defendants' Exhibit 266.

DEFENDANTS' EXHIBIT 266.

NOVEMBER 13, 1912.

J. E. WILLIAMS, Esq.,
Vice President and General Manager,
Excelsior Shoe Company, Portsmouth, Ohio.

DEAR SIR: In reply to your inquiry we beg to say that the use of our machines in the manner which you have indicated to us in the manufacture of McKay welts, is not in accordance with the conditions under which the machines have been supplied to you. Should you desire to make a change in the conditions on which you hold our machines so as to warrant their use in the manner indicated, we will be glad to take the matter up with you further.

Very truly yours,

UNITED SHOE MACHINERY COMPANY,

By

Mr. Williams's letter in reply is defendants' Exhibit 267.

827 DEFENDANTS' EXHIBIT 267.

PORTSMOUTH, OHIO, *Nov. 18, 1912.*

FRED G. KING,
Boston, Mass., United Shoe Machinery Co., Goodyear Dept.

DEAR SIR: For the benefit of your files, since the question has been raised as to the use of a certain machine in our Ironton Scout plant, would say that immediately upon returning the writer had the machine withdrawn from operation, and all the work is being done on your machine. If we should decide at any time in the future to change the plan of making these shoes we will take the question up with you, but at present we are working on a line as per your interpretation of the lease.

Yours, very truly,

THE EXCELSIOR SHOE CO.,
JNO. E. WILLIAMS.

Dict.—JEW—C.

The WITNESS. I submitted to Mr. Williams a schedule of initial premium prices on machines that he wanted on the independent form of lease, which is the schedule that he testified about. The pulling-over royalty, which Mr. Williams interpreted as one-half a cent a pair net, was the royalty given to him for the use of the complete pulling-over system. As to the royalty for the use of the compressor, there would be no extra royalty if he was compressing the heels in the factory in which he was making the shoes. He wanted to compress them somewhere else and sell them to this factory.

For the machines of the pulling-over system which Mr. Williams desired to use one-half cent net was the regular rate, and the initial premiums suggested in the memorandum were the same as always charged to other people.

The quotations were submitted to Mr. Williams through Mr. Simon Ross of our Cincinnati office. Mr. Ross died about three months ago.

As to the testimony of Richard H. Long that I told him that the United Company had decided not to put out any more Eppler machines, I did not so tell him. As to his statement that I told him it would be well for him to fall in line with our plans if he wanted to stay in the shoe machinery business, I never made a statement of that kind to Mr. Long or to
828 any other gentleman in the trade. My relations with Mr. Long have always been pleasant.

As to my conferences with Mr. Long about furnishing machines for his factory, Mr. Long used Eppler machines for nearly a year and a half after the Eppler Company was taken into the United Company. He was promptly supplied with parts and with service whenever he called for it; at once, if we could furnish it, and as soon as possible.

Some time in the latter part of the summer of 1900 Mr. Long came in to talk about the relative merits of the two systems of machines, and he asked me with reference to the improvements that would probably be placed upon the machines. I told him that the Goodyear system was considered to be of the most advantage to the trade, that they were better machines, that there was a larger number of auxiliary machines, that since there were a great many more operators familiar with Goodyear machines they were much easier to obtain than operators for the Eppler machines, and that whatever improvements were placed upon the machines would undoubtedly be placed upon the Goodyear machines, as they were considered the best.

Mr. Long finally concluded to change his system and put in the Goodyear machines. I never said or did a thing to Mr. Long that he could construe in the slightest degree to be a threat to intimidate or coerce him to make the change. He did it entirely voluntarily, of his own accord.

After my talk with Long we continued supplying Eppler machines to others, and furnished parts as long as customers had machines in their possession. We carried Eppler parts at our Brockton office up to the beginning of 1913, but I do not know now of anyone using the Eppler machines.

I had another conference with Mr. Long early in 1905. It was just after we had modified the conditions on which we were

supplying Goodyear machines so that manufacturers could take them on leases with the initial premium or on leases without the initial premium. I remember my interview with Mr. Long very distinctly. He came in and said he wanted to equip a factory in Boston to manufacture women's welt shoes, and he asked me which way I would advise him to lease the machines. I told him it was entirely optional with him and that we were perfectly willing to supply the machines in either way he considered to be to his advantage. We figured out the amount of the initial premiums, which was something like $2,460; and then we figured up the rentals on the auxiliary machines, which I think were about $106 or $110 per year. He remarked that that was less than five per cent of the amount of the investment if he put them in on the initial premium form of lease, and said: "Well, my money is worth to me more in my business than five per cent, so of course I want them on the loan lease." So he ordered the machines, and they were installed in his factory in Boston, and later on were transferred to South Framingham.

My relations with Mr. Long were very pleasant. I frequently called at his factory, and he personally went over the factory with me. I went there to see whether the service was prompt and as we wished to have it, and whether he was receiving his parts as he should.

Mr. Long has never made any claims to me personally that I have threatened him or coerced him or treated him unfairly. He has given evidence to that effect at various hearings. He first made that claim at the hearing before the Massachusetts State legislative committee in 1906 or 1907, when he was beginning some kind of warfare against the United Company, and about the time he was beginning to manufacture machinery himself. I appeared there and denied his statements.

I heard it again in Washington, and denied it there. This is the third time I have denied it, and I deny it most emphatically.

I know Ernest Bottomley, and with reference to his testimony that he had a Duplessis machine and also had a Goodyear machine, and that I called on him and said he would have to use either one or the other, I did not state it in that way. That may have been Mr. Bottomley's inference.

When I first took the matter up with him he had been using United Company machines on the restricted form of lease, including a Goodyear turn shoe sewing machine, with auxiliary machines. He had installed and was using a Duplessis turn shoe sewing machine, which had displaced the Goodyear turn sewing machine, which is the royalty earning machine, and was using

in connection with the Duplessis machine the Goodyear auxiliary machines, on which there is nothing but a nominal rental. I called his attention to the violation of the lease, and he told me he would consider the matter and advise us what he intended to do. A few days later he notified our company that he intended to continue using the Duplessis machine, and would not pay any royalty on the Goodyear machines. As to whether our machine was being used, I don't know positively. I think it was entirely displaced. That is my recollection.

In reference to the testimony of Thomas H. Shinn, that I called on him in Reading, Pennsylvania, and said to him that we should remove all our leased machines unless they discontinued the use of independent machines, that is not so; I did not make any statement of that kind. Mr. James H. Clark, to whom Mr. Shinn referred, and who was then in charge of our Philadelphia office, has died.

Mr. Shinn was operating two factories, one at Reading and one at Hamburg, Pennsylvania. At the Reading factory he was using Goodyear turn shoe sewing machines under leases which provided for their full use, or that if there was additional work additional machines should be installed. At the Hamburg plant he was using Lincoln turn shoe sewing machines, which his concern owned. They consolidated their two factories, and after removing their Lincoln machines to Reading they attempted to use them in the same factory, and I think in the same room, with the Goodyear machines. I called his attention to the conditions of the lease, which was practically restrictive, and after conferring they concluded that they would use our machines. The principal thing that seemed to bother them was getting something out of the investment they had in their Lincoln machines, and we purchased those machines.

831 I did not make any threat to Mr. Shinn, not at all, or any suggestion that we would interfere with his business in any way, and I don't believe that Mr. Clark did, either.

Cross-examination:

In the memorandum that I submitted to Mr. Williams, of the Excelsior Shoe Company, showing how he could take machines on the independent leases, the amounts that I set opposite each machine as initial premiums were in addition to the royalty charges, which were the same under the independent as under the restricted lease. Under the restricted form of lease there was no initial payment on any of the machines on that memorandum. There are some cases in the Goodyear department where there is an initial charge and still a royalty under the restricted form of lease. The charges set out in the mem-

orandum against machines in the pulling over, lasting, metallic and heeling departments were not made under the restricted forms of leases.

As to whether the United Company has built any Eppler machines, they have probably assembled some from parts. I can not state positively whether we have assembled new machines or have rebuilt machines that were taken over from the Eppler Company or had been returned.

Since the United Company was formed it has put out more than forty Eppler welters and more than twenty Eppler stitchers. I don't recollect that we put out any auxiliary machines. These machines were placed principally in Brockton.

There is no one using Eppler machines now. We received back the last Eppler machines quite recently, in December, 1912, and in January, 1913.

The more than forty Eppler welters and the more than twenty Eppler stitchers which the United Company has put out were put out through a period of five or six years after the United Company was formed.

I never made the statement to Mr. Long that the United Company had decided not to put out any more Eppler machines. We furnished the machines to anyone who asked for them, and had supplied them through the years 1899 and 1900 and prior to the time that Mr. Long made his exchange.

I think Mr. Long is not using United Company machines now, but I could not state without looking it up when he discontinued the use of them. I did not personally receive any notification from Mr. Long to take back the United machines. I do not, of my own knowledge, know whether our company did. As to whether or not our company is now rendering bills to Mr. Long for royalty charges for the use of the machines
831 that are still in his possession I don't know. I don't know whether there are any infringement suits brought by the United Company against Mr. Long now pending. I wouldn't have anything to do with that.

Mr. Bottomley had from the United Company a Goodyear welt and turn machine, some auxiliary machines that went with it, and four or five metallic department machines. I am uncertain whether he had any heeling or lasting machines. He manufactured turn shoes. It was not because he used Duplessis machines that the United Company took out its machines. It was because he used the United machines with the Duplessis machines. It would be immaterial to us if he used Duplessis machines, but he held United machines under a restricted form of lease which provided for the use of the United

machines in their entirety, and when he discontinued the use of the principal royalty earning machine, and used the auxiliaries and other machines which he held under restricted leases in connection with the Duplessis machine his attention was called to the fact that he was violating his agreement.

The Goodyear lease provided that he would use the Goodyear machine to its maximum and if any other machines were required he would use Goodyears, and the restricted form of lease of the metallic machinery which he had called for the use of that machinery only in connection with the turn shoe sewing machine supplied by the United Company.

Q. Did you take out only your metallic fastening machines, or did you take them all out?

A. He communicated with us and said that he would not pay any more royalty on the Goodyear machines, so they were all taken out.

Q. You took them all out?

A. Yes, sir.

The Curtis & Jones Company had been running two plants. They did not have any Goodyear machines at the Hamburg plant. I don't know whether they had at that plant metallic fastening machines under the independent form of lease; probably they did. They did at their Reading factory.

I think it was some time in the summer of 1902 that they brought the two factories together. I don't know who put out the Lincoln sewing machines at that time, or whether they were put out by the Campbell Sewing Machine Company. As to whether the United Company later on took over the Campbell Company, I don't know of any transaction of that kind. That was before I had anything to do with it.

833 They had been using Goodyear machines at the Reading factory on turn work. They did not make welt shoes at that time. After the two factories were combined they had some Duplessis sewing machines in addition to the Lincoln machines and the Goodyear machines. I went down to Reading in August, 1902, and saw Mr. Shinn, and I think Mr. Jones, in regard to this matter.

As to whether they had the Reading factory divided, with what was formerly the Hamburg plant on one side of the factory and what was formerly the Reading plant on the other side, so that they had them separated just as they had them before. I don't know whether they did or not. I couldn't say as to that. The real trouble about the use of the Duplessis and Lincoln machines at Reading was that they had Goodyear machinery on leases which required that they would not use any turn

sewing machines not leased from the United Company. That was a lease of the old Goodyear Company, not of the United Company.

They had our metallic machines, but I don't know whether they had any other of our machines. I don't recollect now. They held the metallic machines under an independent form of lease.

I did not say that unless the Duplessis and Lincoln machines were discontinued we would take out our machines. I simply called their attention to the fact that they were violating their contracts in the use of those machines. I did not state what we would do if they continued to violate the contracts. They asked under what conditions they could continue to use the machines, and, of course, I told them that they could not use them under the form of lease under which they had them. Some of these matters had been handled by Mr. Clark, our representative in Philadelphia, before I went down there.

The result was that Mr. Shinn and his partners concluded that it was to their advantage to use the United Company machines instead of the other machines. His principal concern was to get something out of his investment in those other machines which he owned. He negotiated a trade on those machines which was apparently satisfactory.

834 Our objection was that he was using the other sewing machines, in addition to our sewing machines, under the form of lease that he had. He had the old Goodyear Company form of lease, in which it was especially required, and he had agreed, not to use or permit the use in his factory of any turn shoe sewing machines not obtained from the Goodyear Company.

I did not offer them any other form of lease whereby they might use the Goodyear machines in connection with the Duplessis and Lincoln machines. They turned in their Lincoln machines to the United Company. I do not remember what we allowed them, but I don't believe it was as much as $500 apiece.

Direct examination resumed:

The leases to which I have referred and which I attempted to describe were the ordinary forms of leases. I have simply been trying to recall from memory what the usual leases state. The lease which I particularly referred to was the old Goodyear Shoe Machinery Company lease.

834½ UNITED STATES OF AMERICA,
District of Massachusetts, ss:

This volume is one of the volumes of testimony and exhibits referred to in the order of court entered June 19, 1916.

Attest:

[SEAL.] WILLIAM NELSON, *Clerk.*

835 DECEMBER 18, 1913.

JOHN A. RYAN, witness for defendants.

I live at Hyde Park and I am an operator on the Goodyear rapid stitcher. I work for George E. Keith, South Boston. I have operated a stitcher about seven or eight years and am running one now. That is my regular work.

I am now operating the model M stitcher and have been running that for a year. Prior to that I operated the model K stitcher for almost a year, and before that I operated Mr. Plant's Wonder Worker machine, and previously to that I operated the old Goodyear machine.

I worked for Mr. Plant about 15 years—not at rapid stitching all the time—and that was where I operated the old style Goodyear stitcher.

We used to have to stop the old Goodyear stitcher by putting a hand on the balance wheel, stopping the machine and turning it back, then lifting the presser foot. We had to lift the presser foot in order to put the shoe in or take it out.

In operating the model M stitcher, the moment the operator takes his foot off the treadle the machine stops automatically in place for an operator to start immediately on the next shoe and the needle and awl are withdrawn from the shoe. That saves the operation of turning back on the balance wheel and also saves the operation of lifting the presser foot in order to release the shoe.

In using the old machine, whenever you wished to stop the machine, at the end of the shoe or any time the thread broke or any little thing happened, you had to reach up on the balance wheel with your left hand and hold it back with that hand in order to stop the machine. When you took your foot off the treadle it would slow up. It wouldn't come to a complete stop for two or three revolutions; but you had to stop the machine. The least little thing will cause the thread to break at different times—not enough wax or several little things—and when that happened you must stop the machine in the same way, with your hand, and turn it in place. With the new model M machine the moment you take your foot off the treadle the machine stops in perfect place.

836 On the older style of stitcher we always looked at 250 pairs as an average day's work. If we did 300 we should think we did a pretty good day's work. We were paid by the piece then. As to what is the ordinary day's work on the model M stitcher, over where I am now I figure on an average of 300 pairs, according to working conditions, if we have work enough.

Some days we may run it and sometimes we may not. If the work is there, I figure on 300 pairs a day. That is 50 pairs more than the average day's work on the old machine. I have done 375 pairs on the model M stitcher. The work on the model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher, nine hours at the most. Lots of times I don't work nine hours.

The Plant Wonder Worker machine had a stop motion. In that way it was different, altogether different, from model M in regard to the device. It had the same principle. It automatically stopped the machine in place and turned it back so that the needle was withdrawn from the seam and ready for the next operation, which is the improvement in the model M. I had never seen that automatic stop motion on any other machine until I saw the Plant machine when they put it in in 1910.

In the Wonder Worker there was no way in which you could slow the operation of the machine as you stitched around the toe. In the model M I find any time I care to slow down, just release the treadle a little and it will slow up according as I want it. As to whether in sewing around the toe, particularly of a shoe with a sharp-pointed toe, it is necessary to run slower around the toe than down the sides; that all depends on the operator, just as he may happen to want to or not want to. Some of them may slow down the machine in going around the toe; some of them may not. Most everybody will at times, I should say. Some of the very pointed toes it is necessary to slow up on them in order to make a perfect turn.

All six of the stitching machines in Mr. Keith's factory where I am working, are model M machines and have these improvements. The model K's were taken out and the model M's all put in. The latest welter, too, model G, I believe.

837 Cross-examination:

I first worked on a stitcher about 1905. That was one of the old-fashioned Goodyear stitchers. That was in the Plant factory. After I got used to running the machine I did 250 pairs a day. The shoes were stitched as well as any shoes I have made, but there are some conveniences about the present machine that did not exist with that machine.

The next machine I ran was Mr. Plant's Wonder Worker. I never had a great deal of luck with that machine. I still calculated on doing 250 pairs.

Q. Of course, the Plant machine did just as good work as the old machine—nothing wrong with the work, was there, of the Plant machine?

A. It did in one way. It had no Baltimore device—no attachment for it.

Q. What device is that?

A. It is the edge gauge, to keep the distance from the edge of the sole to the upper. It had none of that—a great deal of trouble running into seams and one thing and another.

I did 250 pairs with it. As to whether I heard any complaint about the shoes, of course if it did poor work I should expect it to come back to me. Some work that I did on the Wonder Worker machine came back to me and some also with the old machine. At times it comes back on the model M. The model K machine did not have the Plant stop motion. As to how many shoes I did on the model K, it would figure about the same thing. I figured between 250 and 275 pairs on that machine. I could do more work on the model K than on the Wonder Worker or on the old machine. The model K did away with two operations in lifting the presser foot to place the shoe in and take it out.

The model M machine does more rapid work than the model K. It has a stop motion, but entirely different from the Plant stop motion. I do not know whether the model M had these Plant improvements embodied in it or not. But it did have a stop motion. I can make from 30 to 50 pairs more a day on the model M machine than on the model K. The model M machine has devices which enable the operator to work with more convenience and which save his time. I have worked on the model M for a year.

838 Q. Now, as a matter of fact, all those machines accomplished exactly the same thing; they all made welt shoes, didn't they?

A. Yes.

Q. And all made good welt shoes; on one kind of machine you can make a few more shoes than you can on another in a day?

A. You can make a great many more. I can.

Q. How many more can you make on the model M than on the model K?

A. Well, I don't know; probably thirty or fifty pair.

Q. And one of those machines have devices that enable the operator to do it with a little more convenience?

A. Yes, sir; time-saving devices.

Q. Now, so far as that slowing-down motion is concerned, all the machines had that, did they not?

A. No, sir.

Q. Wasn't there a kind of a friction brake to these machines, and didn't they all slow down when you would release that brake?

A. They all worked on a friction, but you needed to hold your foot on for full power.

Q. Then, as you release your foot it puts the brake on, doesn't it, and slows it down?

A. It releases the friction.

Q. Doesn't it apply the friction when you remove your foot?

A. Yes, sir.

Q. And didn't all the machines have that kind of appliance?

A. All of them had the same appliance, but they didn't hold on the same or release the same.

Q. The appliances were put there for the same purpose upon all of them, were they not?

A. Yes.

Direct examination resumed:

The Wonder Worker machine used to break down quite often, and that was the reason I could not get so much output. All parts of it broke pretty easily and the levers and cams wore out rapidly. It did not stand the work as well as the United machines.

The Plant Wonder Worker machine had to run at full speed around the toe. You couldn't slow up on it.

839 The Baltimore edge attachment is an attachment for stitching extension edges at the right distance from the edge. That was on the older type of Goodyear, but not on the Wonder Worker. It was on the model K and model M machines.

Whatever difference there was between the means for stopping the model M machine and the Wonder Worker machine, it accomplished the same result of having the machine stop with the needle withdrawn ready for the next operation.

I could do more shoes on the model M than on the model K machine.

Cross-examination resumed:

I have known personally of the Baltimore edge attachment being in use for eight years. I don't know whether the patent on it has expired.

DECEMBER 18, 1913.

MARTIN E. WELCH, witness for defendants.

I live in Lynn, and I am a shoe manufacturer. I have been engaged in the shoe manufacturing business for 25 years and began as a boy 47 years ago in a shoe shop. Afterwards I drove a cart collecting work for the shoe manufacturers. In those days the shoes were made in parts in different places. Then I got work in the factory, and as I grew older learned the different

parts of the work. I worked at hand lasting a good many years. I started with my own factory 25 years ago with Mr. Landregan as my partner. At the time Mr. Landregan was shot by some bandits three years ago we had developed a business of seven or eight thousand pairs a day in McKay shoes.

Up to 1906 or 1907 we did not have any United Company machines, except some metallic machines which we had before the United Company was formed, which were transferred to the United Company. About that time we started a line of welts.

840 When we were making McKay shoes we pursued the policy of buying our machinery and owning it. When Mr. Landregan was killed, our investment in machinery was about $129,000. We liquidated the business then, and that investment in our shoe machinery showed a depreciation of about 90 per cent.

Mr. FOWLER. Your honor, I believe we will object to that testimony, and that particular line of testimony, on the ground that it is wholly immaterial.

PUTNAM, J. It is immaterial, I have no doubt myself. I don't think we can go around to the various mills and find out how much depreciation there was in each mill. There would be no end to the testimony.

Mr. FOWLER. We might want to hunt up a lot of mills and show that it didn't depreciate.

The WITNESS. The depreciation in shoe machinery is very rapid, and we figured it at 20 per cent, but I have found, on trying to sell a machine at the end, that it was more than that, and that the machine was absolutely worthless. The changes in shoe machines are very rapid, and you hardly get a machine installed before some one comes around with an improvement on it.

At the time we made up our minds to add a welt line of shoes I thought the United Company had the best machines and put them out on the best terms. I thought the restricted lease the best terms. First, because it allowed us the use of the money which would have to be put in machinery that at some time would be absolutely worthless; secondly, because we could tell almost to a dollar what the depreciation would be at the end, and thirdly, because I made a partner of the United Company. They owned the machines, and it was just as much to their interest to make the machines work to their fullest capacity as it was to my interest to have them work to their fullest capacity. Again, when a man owns his own machine if a part brakes he must put it in, but if there are any poor parts in the United

machines they paid for the parts. They have used me fair in that respect.

At the time we equipped our factory with machines for making welt shoes a man named Desautels, representing the Duplessis Company, drummed us very hard. He said that they had a machine which was not completed which he would like to have tried in the factory when it was completed. I told him the factory was open at any time when he had anything better than we had. He told me that there were machines of other people besides the United Company with which we could have equipped our factory for making welt shoes. He did not offer to equip our factory with welt machines. His statement always was that he had a machine that wasn't completed, and when it was he would like to have it tried in the factory.

841 When we first started on welts we used the National nailer and used it for some time. That was not a United Company machine at that time. We are not now using it because we found we could get a nailer from the United Company that would do the work more rapidly and save some money. We were never coerced into making any change.

All our McKay shoes were finished on machines not furnished by the United Company.

After Mr. Landregan was killed and the business was liquidated we started on a new deal, making welt shoes, and all the machines that I am using in the bottoming room, excepting two or three, are United Company machines. It is my judgment that the United Company's machines which we are using in the bottoming room are better than other machines of those types on the market.

I owned outright two eyeletting machines made by the Peerless Company, but I shifted over and eyelet my shoes on the United Company machines because I can save some money on the work and the quality is just as good.

As regards the model K welter and the model M stitcher, the factory gets no saving from the piece price because the labor union fixes that, but we make a greater number of shoes with a less number of machines. We also make a saving in both the length and width of the welting. We figure that our saving of welt is about one-quarter of a cent a pair; that is, on the welting alone, and we have found that we can use a narrower welt and still get about the same extension as we did with a little wider welt, which amounts to a saving from one-quarter of a cent to three-quarters of a cent, and all according to the quality of welting that you buy. Another advantage of the model K welter is that the man does not have to handle the thread, so

that the shoe leaves the welter cleaner than it did after any welting machine that I have ever seen—that we have used, rather.

When we started three years ago last January we had five model G welters. After we had used them a little over a year I returned them and got model K welters. The return charge was $25. We also had seven model K stitchers. I turned those back and got model M stitchers and I think the return charge on those was $25. We had used those a little over a year.

842 We also changed our sole-laying machines for improved machines. It cost us $14 apiece to return those machines. I have not heard that they have got any improvements on the other machines that we have.

In my opinion the restricted lease of the United Company is the cheapest way to do business, for at least a manufacturer of my size.

I turn over my capital about five times in a year.

Cross-examination:

We were first manufacturing McKay shoes and made them for twenty-one years. We bought all our McKay machinery long before the United Company was formed and we used it until 1906 or 1907.

We bought McKay sewing machines at all prices. We could buy a good rebuilt machine for $125 which would do our work. I think the first new one that I bought was $250.

At first we lasted by hand. That was before there were any lasting machines of any kind used on women's, misses', and children's work. Then we used the Boston tacker, which was simply a tacking machine. The man pulled the upper with his pincers and held the shoe up to the machine and got a tack After that we used the Consolidated hand method lasting machine. We did not use the Chase lasting machine; we don't use it on women's work.

It was along in 1906 that we began to manufacture welt shoes. We took eight welters from the United Company. The man who talked with me about the Duplessis machines said that they were going to have a better machine, but that it was not completed, and when it was he would like to have me give him a chance. I don't know whether it was ever completed. He didn't try to put it in. We put in 12 outsole stitchers. The Duplessis Company had stitchers. Their man said he had machines out. I did not examine them.

843 We used the Consolidated hand method lasting machine on the welt shoes. We had originally had Boston tackers on the McKay work, and at one time we fitted up our factory

with Consolidated machines, but we didn't think they were doing the work very well and we sent them all back. When we started the welts we began with the Consolidated hand method machines, and we are still lasting all our welt shoes on that machine.

We make women's shoes altogether, and have never made any men's welt shoes.

I never had any occasion to try to obtain metallic fastening machines or finishing machines from other concerns in 1906. I didn't make any enquiry about them. They were never mentioned to me by the Duplessis concern.

I should think there would be material differences in the methods of manufacturing women's welt shoes and men's light welt shoes. I should think it would require a heavier lasting machine to last a man's shoe, and of course heavier thread to sew it and so on; but I haven't had any experience on men's shoes.

When we equipped our factory to make welt shoes, I considered both forms of leases that are used by the United Company. We first had our machines on the independent leases and changed over to the new lease.

When we installed our machines we paid the regular prices. I am satisfied I was not used any better than anybody else, and I guess I had to pay the same. I cannot state what we paid when we equipped our factory under the independent leases, but it was probably somewhere about $20,000. When we changed to the restricted leases, that money was refunded to me. I think it was some time in 1908 that we changed to the restricted leases.

At that time I think there were other concerns in the United States from which we could get welters, outsole stitchers, lasters, metallic machines, and heeling machines. I didn't have any occasion to try it, and I cannot give the names, but they were being made without any doubt. There is one in New
844 York, but I can't give the names, because I don't keep them in mind. I believe I could make my welt shoes without the aid of the United Company at any time. I have seen advertisements of second-hand and rebuilt welt machines in the trade papers, and there is not any doubt that machines could be picked up and shoes made outside of the United Company. I can't give the names of those from whom I could have obtained those machines. I have seen those advertisements all right. I had no occasion to go and look at any of those machines and never looked up any of the advertisements. As to whether

I know from my own personal knowledge whether there was another machine in the United States being put out except the one that was being put out by the United Company, I had no occasion to look it up, and I didn't look it up.

As between the unrestricted lease and the restricted lease, in my judgment the restricted lease is preferable because, first, I can put into my business the money that I save instead of investing it in the machinery, so that I have more money; second, I can tell almost to a cent just what the depreciation is on that machinery—I call the return charges the depreciation; and, thirdly, I make a partner of the United Company. I have not a dollar invested in the machines, and their interest in the machines is fully as great as mine, and it is to their advantage to keep the machines working to their fullest capacity. That means less machinery for me to run in the factory, and it means a less investment for the United Company. It is true that under the unrestricted lease the United Company owns the machine, and the company draws the same royalty from that machine as it obtains from the other machine.

Under both forms of lease the company requires us to buy all the repair parts. I do not see any advantage to the manufacturer in taking the unrestricted instead of the restricted lease, the advantage is with the restricted lease. That rests in part on the fact that you have to make a large investment at the beginning. As to whether, as a matter of fact, there is nobody else from whom a manufacturer can obtain machines so that he has to take the machines from the United Company under either form of lease, I don't know. I couldn't say that. I have never had any occasion to look that up.

Direct examination resumed:

Before I changed to the restricted leases I had had the initial premium leases for about two years. I had practically all my machines on the initial payment basis and changed over from my own choice. I got back everything that was owed me.

Referring to my testimony about sending back my Consolidated hand method lasting machines to the United Company, they did not make a particle of trouble because I did not keep them for the full term of 17 years. When we wanted to send them back we sent them back.

DECEMBER 18, 1913.

845

CARL H. GLEASON, witness for defendants.

I live at Watertown, Massachusetts, and I am employed by the United Company at their Haverhill office. I have been employed by them between four and five years.

I was in the employ of the W. H. McElwain Company from July 15, 1912, until June, 1913. I started at their Bridgewater factory first as a machinist, and then started in operating machinery. At one time I was in the cost department.

The McElwain Company is considered one of the big companies of the country. While I was working for them, and entirely independent of the United Company, I made a study of the cost of repair parts on the machines that they obtained from the United Company. I have prepared a chart showing the cost per pair of shoes for the repair parts on the different kinds of machines. This is defendants' Exhibit 268 (a physical exhibit). The red line on the chart shows the point indicating the cost per pair and along this line at different points are the names of machines. My study extended over a period averaging six months and it was made under ordinary operating conditions. I took about all of the royalty machines.

The cost per pair of shoes for the repair parts on these machines was as follows:

Universal channeler, .001 of one cent; insole tacker, .005 of one cent; Rex assembling machine, .009 of one cent; Rex pulling over machine, .07 of one cent; Consolidated hand method lasting machine, .005 of one cent; No. 5 laster, .06 of one cent; tack puller and resetter, .008 of one cent; sole layer, model B, .007 of one cent; loose nailer, No. 2, .01 of one cent; Universal rounder and channeler, .01 of one cent; rounder and channeler, model E, .01 of one cent; Goodyear automatic leveler, .002 of one cent; lightning heeler, .004 of one cent; Mayo heeler, .008 of one cent; Universal slugger, .01 of one cent; edge setter, .02 of one cent.

846 On the welter and stitcher my computation includes, in addition to mere parts, the cost of awls and needles which the machines are using all the time and which are ordinarily classed as supplies. The cost per pair of shoes for the model G welter, including awls and needles, was .15 of one cent per pair; for the model K stitcher, including awls and needles, .2 of one cent per pair; for the model M stitcher, including awls and needles, .08 of one cent per pair.

I also computed the cost of repair parts on the model K stitcher, not including the needles and awls, and that is .1 of one cent per pair.

I made up this chart while I was in the employ of the United Company from material which I got while in the employ of the McElwain Company. The computation runs from January, 1910, until July, 1913; each individual test extends for six

months. I took some tests from January, 1910. I was not there at that time.

Cross-examination:

While in the employ of the McElwain Company in their efficiency department I came in contact with a man in their supply department who had some figures. His duties were to keep the actual cost of upkeep of certain machines for the executives of the McElwain Company. They have a card in the supply room of each factory that gives the data. I came across those data and made the chart for my own amusement. No one instructed me to make the chart. Some of the data had already been gotten by other members of the McElwain concern and I took it from them. The remainder I got myself by visiting their factories. Some of the items include awls and needles as well as the parts. In the other instances only the parts are included. Nothing else is included.

847 Direct examination resumed:

The McElwain Company has maintained this cost department for four years. How much more, I cannot say. My results were obtained from tests running for six months at different times between January, 1, 1910, and August 1, 1913. I have memoranda from which I could tell what tests were before December, 1911, but I haven't the information with me. The prices of parts were taken from the catalogue prices issued by the United Company. It is my judgment that these figures represent a fair average result in the McElwain factory.

(Examination of witness suspended.)

848 DECEMBER 18, 1913.

EDWIN P. BROWN, witness for defendants.

I live at Newton and I am general manager of the United Company, and have held that position since March, 1911. My office is in the same building where Mr. Winslow's office is.

I know George Learned, of Newburyport. I was present at an interview between him and Mr. Winslow at Mr. Winslow's office relating to some machines that Mr. Learned had.

At that interview there was no such conversation as Mr. Learned has testified to. I was present all the time that Mr. Learned was with Mr. Winslow.

I was called to Mr. Winslow's office in the latter part of August, 1911. I entered the office of Mr. Winslow and was introduced to Mr. Learned by Mr. Winslow. Mr. Winslow explained to Mr. Learned that I was the new general manager and he was very anxious to have me present at the interview. Mr. Winslow then

referred to the condition existing in Learned's factory in Newburyport, namely, that Mr. Learned had set aside our turn machines and was using our Goodyear auxiliary and general department machines and other machines with the Fox turn machine. Mr. Learned said: "That is true, I am; but I intend to continue using yours as soon as business picks up." Mr. Winslow smiled and said: "Mr. Learned, where do we come in? You are setting aside our revenue producer and using machinery of ours for which you pay nominal rent, or have paid small initial payments, and it hardly looks to me like a business proposition. Furthermore, I have no objection to your using the Fox turn machine, Mr. Learned, but I think up to the time you do that you should familiarize yourself with the conditions of your leases and live up to them; and I shall expect you either to live up to your present forms of leases, or, if you have definitely decided to use the Fox turn machine, we shall have to change over our leases to forms conforming to the new conditions."

Mr. Winslow spent some little time in going over all the leases on all the machines that Mr. Learned had from our company, and Mr. Learned seemed to be perfectly satisfied with Mr. Winslow's explanation of the lease situation. He said: "I will take this matter back with me and give it careful consideration, and you will hear from me. In the meantime I wish you would let me know by letter what this changed condition will mean, providing I elect to use permanently the Fox turn machine on my turn shoes." The meeting was perfectly friendly in every way throughout.

Mr. Winslow did not threaten to drive Mr. Learned out of business. There was nothing said in that way. He used absolutely no threatening or coercive talk or methods and the parting between the two men was most friendly.

849 As a result of that talk I sent Mr. Learned a list showing the initial payments required by independent leases for the machines which he had.

(Examination of this witness suspended.)

850 DECEMBER 19, 1913.

CARL H. GLEASON, witness for Defendants (resumed).

Direct examination resumed:

As regards none of the machines which I mentioned yesterday was my examination of the figures prior to December, 1911. I made an examination to ascertain whether the periods that I took were fair average periods, showing the costs on those machines running back to a period considerably prior to December, 1911. By comparing the production of shoes at the

period of these tests and at other periods when these tests were not taken running back to a period considerably prior to December, 1911, I consider these figures to be fair average samples of of the cost of parts for those machines for a considerable period.

Cross-examination:

The data that I have prior to December, 1911, I got at McElwain's East Side factory, Manchester, New Hampshire. Some of it I took from documents in the possession of E. E. Griffin, who was employed by the McElwain Company at that time and was managing the supply department. Some of the data I got myself. I should judge that I got about 75 per cent of the data from him as to the machines which I mentioned yesterday. He had simply made up sheets showing the cost of the parts supplied to the Cohaz factory, East Side factory, and Derryfield factory, and I made the computations myself. I took the total production of the three factories and the cost of the parts for the three factories.

851 DECEMBER 19, 1913.

EDWIN P. BROWN, witness for defendants, resumed.

Direct examination resumed:

The list of initial premiums on machines which Mr. Learned asked for at the interview in Mr. Winslow's office and which I sent to him at Newburyport is contained in defendants' Exhibit 86. (Record, p. .) That list shows the United Company machines which Mr. Learned was using which might be affected with respect to their leases by the use of the other machines which he desired to use.

I never received any reply from Mr. Learned about this matter. I next saw him early in December, 1911. I was then called to Mr. Winslow's office, and Mr. Endicott, Mr. Learned, and Mr. Winslow were there. I was present during the conversation.

Mr. Endicott asked me if I was present at a conversation between Mr. Winslow and Mr. Learned in the latter part of August, 1911, to which I replied that I was. Then Mr. Endicott asked me if I recalled Mr. Winslow stating to Mr. Learned that if he did not throw out the competing machine he would put him out of business. I replied: "No, sir; there was nothing said at the interview that would warrant any such statment." Mr. Learned, in the course of conversation, admitted that he was mistaken. Mr. Endicott then said to Mr. Learned: "I think you should write a letter of apology to Mr. Winslow." Mr. Winslow added: "I think you should correct any statement made to Mr. Harriman," I believe, "your partner, and others.' And, as I remember it, he agreed to do this.

This was the end of the conversation and the parting was pleasant. I have not seen Mr. Learned since; I have not had any correspondence with him, and have heard nothing more from him.

I have met Frank Merrick and Charles Luitweiler. I met them at Mr. Connor's office, at 205 Lincoln Street, and at the Algonquin Club. I was present at only two meetings with them. I brought about the meeting at Mr. Connor's office. Mr. Bresnahan, who was with us, called my attention, early in May, 1911, to his meeting Mr. Luitweiler and Mr. Merrick on the ferry coming to Boston, and said they had called his attention to a new shoe that they were at work upon and a new curved-needle stitching machine, Accordingly I made the appointment
852 with Mr. Connor. At that meeting there were present Mr. Connor, Mr. Luitweiler, Mr. Merrick, Mr. Fraher, and I. It was late one afternoon in the middle of May, I should say.

Mr. Connor, in conversation with either Mr. Merrick or Mr. Luitweiler, said that his attention had been called by me to their new shoe, or a new shoe that they had been at work upon, and a new curved-needle machine, and asked: "Do I understand that you wish to dispose of this, and have you a proposition to make?" Without attempting to give the verbatim report—there was considerable talk back and forth in a very pleasant way—Mr. Merrick and Mr. Luitweiler finally named a price of several hundred thousand dollars—$750,000, I should say, in round numbers—and Mr. Connor said: "Well, I should have to investigate very carefully. I can't tell from the information I have at hand whether or not we would even be interested. If you care to have me look into it, I should be glad to do so, but I want you to understand that we wouldn't consider it for a minute, otherwise than on its merits, only in so far as it is an improvement over anything that we have or is something that we can use advantageously for our lessees." An appointment was made for him to inspect the machines and patents.

The other meeting at which I was present was at the Algonquin Club. Mr. Connor said that he had carefully inspected the machines and the shoe, and that he was not interested in the proposition and had no counter proposition to make. There was considerable talk back and forth, but that is the substance of the interview.

Cross-examination:

As to the list of machines in defendants' Exhibit 86, which was sent to Mr. Learned, we do not have those initial payments under the restricted form of lease. Those are extra.

I brought about the meeting between Mr. Merrick, Mr. Luitweiler, Mr. Connor, and myself at Mr. Bresnahan's suggestion, and he arranged for the meeting. As to whether anything was said at the last meeting at the Algonquin Club about buying up a competitor, as I recall it, Mr. Connor asked how they made up the figures for the price of $750,000. Mr. Merrick or Mr. Luitweiler said there was three hundred and some odd thousand dollars for his harness business. Mr. Connor was very anxious to know how he arrived at the balance, some $400,000. The new machines and good will were mentioned. Mr. Connor said: "Why, I have told you at our various interviews that I wouldn't consider buying up a competitor," and jokingly he said: "Do you want to go to jail? I don't."

853 Direct examination resumed:

Referring to the list of defendants' Exhibit 86, from the beginning of the list down to and including the Universal slugging machine the prices were all initial premiums. Those were in addition to the royalties. The remaining machines are general department machines and the prices are outright sale prices, with no royalty. There is an initial premium on seven of the machines and an outright sale price on fourteen.

854 DECEMBER 19, 1913.

CLARENCE D. REED, witness for defendants.

I live at Whitman, Massachusetts. I am a shoe manufacturer and am treasurer of the Commonwealth Shoe & Leather Company, of which Mr. Charles H. Jones is president. I have been engaged in the business 25 years or more, and have been connected with the Commonwealth Shoe & Leather Company ever since it was organized 25 years ago.

I have charge of the manufacturing end of the business. That includes the making of the shoes. We call the selling end the financial end, and Mr. Jones has that. My office is at the factory at Whitman. Our factories are located in Whitman, Massachusetts, and Gardiner and Skowhegan, Maine. I have charge of all the factories, and have had charge of the selecting of the machinery for the factories for over ten years. Mr. Jones comes to the factory very seldom.

I made an examination of the Plant machines in 1910 at Mr. Plant's factory. I looked over the machines, saw them operating, and went through them.

We make welt shoes altogether and our output is about 6,000 pairs a day.

Q. Was the question of equipping your factories with the Plant machines presented to you for consideration?

A. Yes, sir.
Q. And did you give it consideration?
A. Yes, sir.
Q. What did you decide?
A. Decided we better not have them.
Q. And will you give your reasons?
A. Well, we thought we were—of course the machines looked light to us, and our work is men's work, which is heavier, and we thought there would be danger of breakage and trouble, and we thought that we would probably be bothered on getting parts; and then the methods were somewhat different from ours. We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking.
Q. What do you mean by "lower your standard of shoemaking"?
A. Well, we should get poorer work.
Q. From the Plant machines than what you then had?
A. That is the way we felt.
855 Q. Now, did you communicate your decision and your reasons for it to Mr. Jones?
A. Yes, sir.
Q. In reaching that decision did you give any consideration or weight to the covenants or provisions in the leases between your company and the United Company?
A. Well, we always think them over; that is, I thought we ought to have the United machinery, regardless of any lease.
Q. You mean regardless of the provisions in the United Company's leases?
A. Yes, sir.
Q. In preference to the Plant machinery?
A. Yes, sir.
Q. And were the considerations which you have stated as to your judgment of the Plant machines those which decided you?
A. Yes; that is about the heft of it.

Cross-examination:

As to whether Mr. Plant made me any proposition to install his machines, he talked it over in his office after we had been through the factory, but he did not make any definite proposition. He did not say anything to me about putting in his line of machinery for a period of two years and that he would take them back at the end of that time if we didn't want to keep them.
Q. Well, in coming to the conclusion that you came to that you didn't want to install the Plant machines, I understand you to say that you took into consideration the United's leases?

A. Why, we always think of what the obligation is.
Q. Now, did the leases that you had at that time with the United Shoe Machinery Company in any way enter into your consideration of the Plant machines?
A. Well, we always——
Mr. GREGG. No, no. Just answer the question.
(The last question is read.)
The WITNESS. I should say not.
Q. Now, isn't it a fact, Mr. Reed, that one of the principal reasons that you did not take on the Plant machines was due to the fact that you had leases from the United Shoe Machinery Company which prohibited the use of certain of their machines with other machines?
A. No, sir; that was not my reason.
Q. Not your reason?
A. No, sir.
Q. You did not consider that matter at all?
A. Well, we always think it over in connection with machinery.
Q. What do you mean by "thinking it over"?
A. Well, I mean to say that we preferred the United machines regardless of the lease—notwithstanding the lease.
Q. You say "we." Whom do you mean by "we"?
A. I say "we." I would say "myself."
I do not know whether that was Mr. Jones' conclusion also. He is the principal owner of the Commonwealth Shoe & Leather Company.

Direct examination resumed:

I own some over one-third of the company. Mr. Jones owns more than 51 per cent.

856 DECEMBER 19, 1913.

FREDERICK ALLEN, witness for defendants.

I live at Lynn and I am a shoe manufacturer. My firm is Allen, Foster, Willett Company, and I have been connected with that firm about five years. Prior to that I was president and superintendent of the Joseph Caunt Company, at Lynn. I was with them about twelve years. Altogether I have been in the business about seventeen years. I began cutting shoes in the cutting room and worked up to the presidency of the company. I am now the president of the Allen, Foster, Willett Company.

We make medium priced welts, turns, and McKays. We get machinery from the United Company. Our present factory was equipped with the welt machinery about two years ago.

The Joseph Caunt Company made medium priced McKays and did not make any welt shoes. They had machinery of the United Company.

In our stitching room we have machinery which we bought outright and own. It stands us about $20,000. We own very little machinery outside of that. From my experience I have found that the annual depreciation on shoe machinery is 33⅓ per cent.

When we equipped our new factory with machinery for making welt shoes we took the restricted form of lease. Of the three forms of obtaining machinery for making welt shoes—by purchase, by the independent lease, or by the restricted lease—in my judgment the restricted lease is the more advantageous for the manufacturer. I prefer that to purchase because I don't have to tie up our money in machinery, which as an asset is worthless as soon as it is installed. An investment in machinery has not any value for the purpose of obtaining credit; no one considers it an asset. Also the money is tied up so that a manufacturer is prevented from doing that much more business.

857 Our capital is $100,000, our surplus is $62,000, and the reserve is $42,000. Our gross business last year was about $1,400,000. We turn over our capital eight times a year.

As to the importance in the successful operation of our machinery of the service which the United Company gives, it is a tremendous advantage.

I can remember ten years ago, twelve years ago, when we did have some machines from the independent companies—some of the Bresnahan machinery, I believe—it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired. At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage.

If I had had to buy my machinery I don't think I should have been able to start in business, because it would have taken all my capital to buy machinery. Under the arrangement by which I can obtain the machinery by lease, I can put all my capital into the business.

We have the improved welter and stitcher, the model K welter and the model M stitcher. On the model K welter there is a saving in the welt on account of the automatic cut-off attachment that the old machine did not have. On the old machine the operator, after he had got his shoe welted, pulled it out and cut off the welt with a knife. The new mcahine cuts it off auto-

matically and exactly and saves about two inches on each shoe, four inches on a pair. The welt costs between four and three-quarters and five cents a yard and 32 inches is ordinarily required for a pair of shoes.

858 Our saving in welt alone is about one-fifth of a cent a pair. I have not been able to find that we make any saving in the width of the welt. The machine is speedier and the operators like that. We can make more shoes on fewer machines.

On the old welters the operators earned from $30.00 up to $40.00 a week. On the new machine operators earned over $50.00 this last fall when we were very busy; that is, we have some men who are earning $10.00 a day running the welter.

There has also been a gain in the efficiency of the stitcher. It is speedier and the stop attachment makes it a very advantageous machine as compared with the others.

The piece prices which we pay in Lynn are regulated by the unions. But notwithstanding that the output of these machines is increased by these new devices.

Our men are not now operating the machines to their capacity. When they do a full day's work on the welter they get over forty dozen, 550 pairs, a day.

Cross-examination:

When we equipped our factory with welt machinery we went to the United Company. We did not make any effort to get machinery from any one else. We did not inquire.

The machinery which we bought outright is our stitching-room machinery. In the bottoming room we have Puritan stitchers that we bought outright. One came from the Puritan Manufacturing Company and I believe the other one was bought second hand; that is a machine for fairstitching. I don't know whether the United Company has a machine for that work.

I preferred the restricted form of lease because I am not obliged to tie up my money. There was a less investment of money if I took the machines under the restricted form of lease than if I took them under the unrestricted form.

Outside of the Puritan machines we use United machines exclusively in the bottoming room. We use their eyeleting machines, but we don't use any clicking machines.

859 I understood one of Mr. Choate's questions to be, with the amount of money that I had to start in business, if I had the privilege of either buying or leasing machinery, which I would have taken. By my answer I meant that I would have taken the leased machinery.

The daily capacity of our factory is 6,000 pairs, of which 2,000 pairs are welts. Only three of our five welt machines are running. Of the other two, one is in the turn department and the other runs spasmodically, just according to our work.

I should think it was about a year ago when we got this new improvement on the welter, cutting off the welt. I do not know the names of the operators who earned as much as $10.00 a day. I will get them if desired.

The new stitchers have been in about a year. I have never operated either a welter or a stitcher myself. I have seen the improved stop attachment on the stitcher and have watched them operate. I think that was on the machines when we first got them.

Conservatively, I think machinery depreciates 33⅓% a year. When I stated that machines depreciated thirty-three and one-third per cent a year I meant that at the end of three years the machinery would be worn out. We bought the Puritan machines about three years ago. One of them has been built over several times. The other machine was new when we bought it and that one has been built over; whether entirely, I couldn't say. They are constantly putting in new parts and repairing them all the time.

Some of the McKay machinery has been in five years. It is not worn out. I don't know how much it costs to keep up the McKay sewing machine or the welter or any other machine. We have lasting machines that we have used for more than three years. A few have been in five years. We keep supplying new parts. I do not know how much it costs us to keep them up; the repair charge is all thrown into one sum.

When I said that machines depreciated thirty-three and one-third per cent a year I meant that the life of a machine is practically gone at the end of that time, that in ninety per cent of the cases there will be new machines of those types on the market that would make it advantageous almost to throw the old machines out and take the new machine. I did not mean that the machine would be worn out at the end of three years, but improvements would relegate it.

860 Direct examination resumed:

We are using Puritan fairstitch machines in the same factory with the machinery that I got from the United Company. They have not in any way objected to our use of those machines. We use them on the McKay products, and the same shoes are operated upon by the lasting machines and several other machines which we got from the United Company on the restricted form of lease.

Cross-examination resumed:

We pay between eighteen and twenty thousand dollars a year in royalties to the United Company.

861 DECEMBER 19, 1913.

KARL KILBURN, witness for defendants.

I am employed by the United Company as royalty clerk, and I have charge of keeping track of royalties paid by different companies.

I have made a study of the use of machines obtained from the United Company by the various people who were mentioned by Mr. Harriman, a witness for the petitioner, for the purpose of ascertaining how long those people whom he named had had our machines and what use they made of them when his machines were introduced.

On July 28, 1910, when Mr. Harriman said that his company, the Haverhill Company, put a turn sewer into the factory of Lynch & Sherman at Lynn, they had two turn sewing machines from the United Company for doing the same kind of work and had had the machines for three years or more. As shown by their royalty returns they had been sewing their turn shoes on those machines prior to July 28, 1910. When Mr. Harriman's machine was put in they discontinued the use of one of our machines and used the other one. The machine which was discontinued was allowed to remain idle between August 2 and August 14, inclusive.

The lease under which Lynch & Sherman had elected to take that machine contained the clause under which they agreed to use the United Company's machines to their full capacity.

Lynch & Sherman also had a channeler from the United Company. I have no way of knowing what use they had been making of that machine prior to the installation of Harriman's machine, because the use of it is recorded by the principal machine. They had had that machine for three or four years.

In June, 1910, when Mr. Harriman testified that the Haverhill Company installed a turn sewer in the factory of W. S. Chase & Son, Incorporated, of Haverhill, they had three welt

862 and turn sewing machines for doing the same work from the United Company, and they had been there for several years prior to 1908. They also had auxiliary machines from the United Company.

When the Haverhill sewer was put in they discontinued the use of one of the United machines, in addition to one already idle, so that two of the three were left doing nothing. The

machine which was discontinued was idle for only about a month; the other machine continued idle for several months.

They began to use our machines again to sew all their shoes in April, 1912. Between June, 1910, and April, 1912, these machines were not being used to anything like their full capacity, but they were not surrendered, and Chase & Son kept the machines without using them.

When the Haverhill Company installed a turn sewer in the factory of Carleton & Hunt, of Haverhill, in May, 1910, Carleton & Hunt had two turn sewers from the United Company. They had had one since 1899 and one since 1903. When they put in the Haverhill machines they discontinued using one of the United turn machines, and that was idle continuously for nearly two years, but they still kept the machine. Materially less work was done on the other machine, but they kept that also.

When a Haverhill turn sewer was installed in the factory of George B. Leavitt & Company, of Haverhill, in May, 1911, they had three United Company turn sewers in that factory, which had been there since 1907.

When the Haverhill machine was installed, in addition to one United machine which was already idle, a second machine was discontinued for at least four months, so that two out of the three machines were idle for four months at least, but they retained the machines.

863 In May, 1911, when a Haverhill turn sewer was installed in the George W. Herrick Shoe Company factory at Lynn, the Herrick Company had five Goodyear welt and turn sewing machines. My records show that two machines were used for making welt shoes. One was entirely idle and two were used on turns. When the Haverhill machine was introduced the Herrick Company discontinued using one of the machines that was in use, and that remained idle for approximately ten days. The Herrick Company also had three heeling machines of the United Company, one of which they had had for twelve years, one since 1907 and one since 1908. After the Haverhill heeler was installed in June, 1911, the output of the United heelers, as compared with the total output of the factory, decreased nineteen per cent.

In March and September of 1911, when Mr. Harriman testified the Haverhill Company installed turn sewers in the factory of N. D. Dodge Shoe Company, of Newburyport, that company had two turn sewers of the United Company, one of which had been in use since February, 1910, and one since February, 1908. After the Haverhill machine was installed one of the United Company's machines stood wholly idle until September, 1911,

when they returned the machine. The other machine continued to be used regularly.

In May, 1910, when Mr. Harriman testified a Haverhill turn sewer was installed in the factory of F. M. Hodgdon, of Haverhill, that company had eight turn sewers of the United Company, of which four had been shipped in 1896 and one each in 1897, 1898, 1899, and 1908. When the Haverhill machine was installed one of the United Company's turn sewing machines was discontinued, and stood idle until October 25. The other seven machines were not used to their capacity during this period. There were days when they were idle, but none of those seven was idle continuously more than two months at a time.

In December, 1910, when Mr. Harriman testified that
864 Hilliard & Tabor installed a Haverhill turn sewer, they had four turn sewing machines of the United Company which they had had since July, 1902, and they had been using them since that time. When the Haverhill turn sewer was put in one machine was discontinued and stood idle for more than six months.

All of the concerns to which I have been referring had the auxiliary machines as well as the principal machines.

Hilliard & Tabor also had one heeling machine from the United Company, which they had used since 1906. Up to November, 1910, when Mr. Harriman testified that the Haverhill Company installed a heeler, the United Company's heeler was being used. After that time the United Company's machine was used to not over fifteen per cent of its capacity.

In March, 1911, when Mr. Harriman testified that C. H. Aborn & Company, of Lynn, installed a Haverhill heeler, they had in their factory two United Company heelers, of which one was shipped in 1900 and one in 1905, and both of which had been used up to that time.

After the Haverhill machine was installed one of the United Company's heeling machines stood practically idle for over a year and a half.

Cross-examination:

I work in the office of the United Company, and I am a clerk. I know nothing about the agents who are in the field and look after the machines, or what they said in these various instances to men who were using the machines. I do not know why it was that the Haverhill machines were finally taken out. What I have been testifying here to is matter that I have learned from inspecting the accounts of the company. I do not know anything that passed between the men that I have mentioned and

the agents of the United Company, so that I am not in the attitude to contradict Mr. Harriman or any other witnesses.

865 Direct examination resumed:

I have examined the slips returned by each of the companies which I have mentioned, showing the use of each machine of which I have been speaking.

In February, 1910, when Mr. Dodge, of the R. H. Long Company, testified that that company installed two outsole stitching machines in the factory of J. L. Walker & Company, of Lynn, that concern had four outsole stitching machines of the United Company. Three of those machines were furnished in 1905 and one in 1908. After the Long machines were installed the use of one of the United Company's machines was substantially discontinued. In February it was idle seven days, in March nineteen days, in April it did but 408 pairs, and in the two following months one machine was idle.

The leases of J. L. Walker, Lynch & Sherman, Chase & Son, Leavitt & Company, Herrick Shoe Company, Dodge Shoe Company, and Aborn & Company carried the full-capacity clause. The leases of Carleton & Hunt, Hodgedon, and Hilliard & Tabor did not.

Cross-examination resumed:

With respect to these later matters about which I have been testifying, I obtained my information from the records of the company. I do not know whether or not the auxiliary machines were used by these various manufacturers in violation of their leases.

866 DECEMBER 19, 1913.

ALBERT HARRISON, witness for defendants.

I live on Worcester Street, in Boston, and am foreman of the lasting department of Rice & Hutchins, South Braintree. I have worked for them for six years.

In 1910 I was working in the lasting department at the T. G. Plant factory, in Jamaica Plain. I was a hand side laster. I know Frank Morrison, Charles Ross, and Abram Sochat.

In the spring of 1910 I was a member of a committee from the lasting room to interview Mr. Plant. The other members were Frank Morrison, Bennie Epstein, and Joe Murphy. That committee went to see Mr. Plant and I was the one of the committee to speak first.

The occasion for the committee seeing Mr. Plant was that he had recently installed a new toe lasting machine and had voluntarily given the machine operators an increase in wages, while

the benchmen were left at the same price as before. The new machine was new to the operators and more complicated than the machine they had had before, so that they did not get out quite so much work, and we understood Mr. Plant gave the increase in wages so that they would try to run the machine as fast as they did the old one. Mr. Plant had a rule that each operator should keep only just so many pairs ahead of the next so that the shoes would not be hardened up when they got to the machine. A shoe has to be kept in temper while it is being lasted. Because the lasting machine operators were a little slower they didn't make so many shoes and that reduced the wages of the benchmen considerably. So there was dissatisfaction among them and the committee was formed to see Mr. Plant about getting more wages to equalize it.

There were sixty-five lasting machines and for each machine there was a machine operator and three men at the bench, making about 260 working at lasting. The committee represented those men. No other department, except the lasting room, was interested, so far as I know.

867 The rules there require that in case of dissatisfaction the men go first to the foreman, and if he doesn't give satisfaction he reports it to the superintendent, and if the superintendent can not settle it the committee is entitled to see Mr. Plant. We did not get satisfaction from the foreman or the superintendent and asked for the interview with Mr. Plant.

At the meeting with Mr. Plant Mr. McGaffee, Mr. Morrison, Mr. Epstein, and I were present. We spent over four hours with him and stated our grievance as I have explained it.

The next morning he asked us to state the matter again before our superintendent, Mr. Slosberg, which we did. He told us that our argument was all right, that we would get an increase as soon as he could figure it out, and we did get it inside of a month. That is the whole story of the trouble.

In any of the conferences among the men I did not hear Morrison or Ross or Sochat make any claim that the United Company was doing anything about this lasting trouble. I didn't see that they had any money which they were using among the man. I didn't get any of it or hear of anybody who got any money. As to their testimony that they used over $2,000 in entertaining the men, I did not see anything of that sort done and I did not see a cent spent by those people among the men. I did not hear talk of agitation by those men to stir up a strike or anything of that sort and no union was formed that I know of. As to their

testimony that they had a list of 300 men whose names were on a roll for forming a union in that factory, I never heard of anything of that sort and no such thing occurred to my knowledge.

Cross-examination:

I do not know whether there was any attempt to form a union.

868 JANUARY 6, 1914.

JONATHAN BROWN, Jr., witness for defendants.

I live in Hamilton, Massachusetts, and am engaged in the business of manufacturing shoes in Salem, Massachusetts. I have been in that business since 1879. I make women's, misses', and children's McKay sewed shoes and standard screwed shoes. I have been making McKay and standard screwed shoes in gradually increasing numbers ever since we began business. I make 7,500 pairs a day.

We have obtained a good deal of our machinery from the United Company. We use the McKay sewing machine for stitching the sole to the upper of our McKay shoes. We have obtained those machines everywhere, from Gordon McKay's organization up to the United Company. Some we bought outright and own. There is no difficulty in buying all of those machines anybody wants at any time.

We use thirteen McKay sewing machines in our factory, of which we own ten and obtained three from the United Company on lease. We have had those three for several years. The United Company has never caused us any difficulty or interfered with us in connection with our buying McKay sewing machines while we have their leased McKay sewing machines in our factory. We have done as we wanted to absolutely without any interference.

We have from the United Company the "niggerhead" lasting machine, pulling-over machine, pounders, Ensign lacers, heeling and nailing machines.

Q. Have you at times used either nailing or metallic fastening machines other than those obtained from the United Company?

A. Yes, sir.

Q. What ones, do you remember?

A. Well, we used to use the National heeler.

We used to buy those some from the Hawkins Machine Company. We changed to the United Company machines because we got better work on them. There was absolutely no interference with our use of the other machines and the change was made of our own free choice.

As to the comparative excellence of the machines of the United Company which we use and the machines supplied by others, the

United machines are so far superior that there is hardly a comparison to be drawn.

869 In fact, I think I stated either in Washington or up here to the statehouse that, if we had our choice in the matter, we wished that every machine we had in our establishment was under the control of the United Shoe Machinery Company. That is because we get such excellent service; we get it promptly; we get it cheap, and it allows us to go ahead with our production and figure down to a minimum cost for our shoes and go ahead and manufacture them without having the delays that we are subjected to whenever we have other machines.

We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed, where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for some one to have the machine repaired, and it might be three days, four days, a week, or ten days before we would get anyone to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that 500, 600, or 700 pair of shoes were simply lying idle. To-day, if any of our machines break down—that is, any of the United Shoe Machinery Company's machines—we telephone over there, and inside of three minutes we have some one to put it in order. The consequence is we can figure on our production at the lowest minimum cost, and I might also add that this is not the case with our stitching-room machinery.

We get our stitching-room machinery from the Singer Sewing Machine Company, Wilcox & Gibbs, Reece Button Machine Company, and the Union Special Machine Company. They don't furnish good service, and it is simply a case of my hearing all the time when they have promised to send a man, and when he is scheduled to come over, and that their man is in some other part of the State.

This matter of service is just as important as the buying of leather, for if the manufacturer does not get the service he can not get his shoes out after he has bought the leather. He certainly can not figure on what payments he can make for his leather, because in order to get his money he has to ship out his shoes. Delay in getting out his shoes is of vast importance, as most manufacturers are men of ordinary means.

I turn over my capital about five times each year, but I carry more leather than most manufacturers, and therefore do not turn over my money as often as a man who bought his
870 leather as he wanted it. The average manufacturer turns his money oftener than I do.

With reference to the machinery that I have bought, my idea as to depreciation in that machinery, either from wear or becoming obsolete or from new machines being invented which are better and which we have to have, is that the minute a belt is put upon a shoe machine the manufacturer should deduct fifty per cent. That may seem pretty drastic, but from my experience the manufacturer will come out a loser after that. We had three twin Tapley burnishers for which we paid $1,000 each, and which we did not get of the United Company. Those machines went out in a night because a new method of finishing heels was discovered. We did not get six months' work from the Tapley burnishers, and they are still in our cellar. We have never been able to realize a cent from them. They became worthless when the new machines were introduced. The new invention was so much cheaper that we had to take it to keep abreast of our competitors.

This was a frequent occurrence and was the condition that continuously existed prior to the formation of the United Company. Now they furnish us with up-to-date machinery, and if anything new comes out they give us the advantage of it.

Depreciation is so rapid that from my experience, including adjusting two losses by fire when I got the views of different people on the value of shoe machinery, I don't dare to carry shoe machinery on our books as an asset at all. We don't include it in our trial balance as an asset in any way. If we buy a machine it is charged off as an expense.

As to my experience in being furnished with new machines or improvements on old machines by the United Company, it has been most satisfactory. They give us the best improvements and every advantage we can get. As to whether I can give any specific instances that I now have in mind—well, there is no specific instance; it is general.

It is generally known among shoe manufacturers that the United Company furnishes prompt and efficient service to its customers. To my knowledge no other company which
871 supplies machinery to shoe manufacturers furnishes any service in any way comparable to that of the United Company. Assuming that machines were of equal merit, this factor of service would be an important element in deciding

which company to trade with. There would be no question. You would simply go to the United Company because of the service. It certainly is as vital as that.

As to the machines which we have from other companies, it has been my experience that none of the other companies furnishes any service of the character of the United Company's service. We use a little over one hundred machines that are bought from others and are similar to machines which we could buy or lease from the United Company, including the Puritan fairstitch machine, the Julian rounding machine, and the cementing machine.

The Puritan fair-stitch machine stitches the edge of the shoe, so as to make a McKay shoe look like a welt shoe. The United Company has not interfered in any way with our using that machine together with machines we obtained from the United Company. It is working side by side with a machine furnished by the United Company for doing the same work, the Goodyear stitcher.

The Julian rounding machine rounds the soles to a pattern. The United Company furnishes their Planet rounder for doing the same work. We do not use the United Company cementers.

I know Mr. Charles H. Jones. As to Mr. Jones's testimony that he had never stated that he was anxious that the larger shoe manufacturers should be able to get a smaller rate of royalty than small manufacturers were able to get, I had a conversation with him at the statehouse in Boston in the summer of 1911 at a hearing with reference to the United Company.

The conversation occurred just as I came in from lunch. Mr. Jones was sitting off at the right as I entered, and I walked up and shook hands. He said: "Jack, I am glad to see you." He said: "It is time we big manufacturers should pay less royalty than the smaller ones." "Well," I said, "Charley, if that is your opinion, this is a good place for you to get up and state it." And then he argued out—he said: "We were small once." I said: "Certainly, but the United Shoe Machinery Company will never give anyone one per cent of advantage, one way or the other."

872 The phrase that he used to describe the people, or the class of people, who he thought ought to get the smaller rate was, "We large manufacturers should get a smaller rate than the small ones." I remember it because I was gratified that he included me as one of the larger ones.

Mr. James W. Hitchings was present when Mr. Jones made that statement.

Cross-examination:

Besides McKay shoes we also make standard screw shoes.

We discontinued the manufacture of turn shoes about two years ago, and we do not take any welt shoes. We have been accumulating our thirteen McKay sewing machines ever since we were burned out in 1888. We are still using some of the machines that we purchased twenty-three years ago. We have charged those machines off only once. I have no idea how much it costs us a year to keep up one of those machines. I can not state whether it costs us $5.00.

Of the ten McKay machines which we purchased we bought eight before the United Company was formed. We purchased some of them from the Stanley Manufacturing Company, and some from the Rowan concern, which finally merged into the Hamel Company. The Hamel Company is in existence now. I do not know who controls the Stanley Company. They are running a big machine shop now, and I suppose Mr. Stanley controls it. I see him and his son there.

The Hamel Company manufactures McKay sewing machines and there are several concerns that rebuild the machines. I can not now give the names of any of those concerns, as my brother buys those machines, but I can make a list of the concerns from which we can get McKay machines. As requested, I will do so.

When I speak about charging off fifty per cent of the cost of a machine as soon as the belt is put on, I have reference to any shoe machinery.

We have twenty-four hand method lasting machines, which I called the "niggers," which we obtained from the Consolidated & McKay Company. They now all belong to the United
873 Company. Some of those machines we have been using from fifteen to twenty years. Before that we used the Boston tacking machine, Boston lasting machine.

I have no idea what it costs us to keep up those lasting machines, and I do not know at what price we keep the machines insured. My brother gets the insurance.

We put in three pulling-over machines about two years ago and we have been using the six rotary pounding machines a year or a year and a half. They are new machines.

There is no royalty on the Puritan machine, and if I use the United Company's rapid stitcher instead of the Puritan I pay a royalty on that. I have had those two Puritan machines seven or eight years. They do the same work as the Goodyear stitcher.

The Singer Machine Company undertakes to furnish service for the repairs of the machines that we obtain from them. We pur-

chase those machines and we pay for repairs. They charge the labor from the time the man leaves their establishment.

As to whether my principal reason for favoring the United Company is because it is giving us good service, the United Company gives us excellent service. We are located eight or nine miles from the nearest office in Lynn. We notify that office when we desire repairs to be made. They charge us for parts when they are necessary.

I have never had any experience with reference to keeping up their machines with any competitors of the United Company as to the lasting machine, metallic fastening, heeling and stitching machines. We had the experience prior to the formation of the United Company, with all the machinery concerns there were.

Direct examination resumed:

The United Company charges for repair parts when necessary, and we determine the necessity. The United Company's men go to my brother, who is superintendent of the factory, for his sanction before they put a part in. If he isn't there and the part is put in and we then object, it is always adjusted satisfactorily. We have never found that any of their men wanted to put in

874 parts in excess of what they should. When repair parts have been put in as the result of a defect or anything for which the United Company was responsible, they charge the parts and give us credit for them.

(Examination of witness is suspended.)

875 JANUARY 6, 1914.

JAMES W. HITCHINGS, witness for defendants.

I am a member of the firm of Luther S. Johnson & Company, manufacturer of slippers, at Lynn. I grew up in the business from 1875. I am in charge of the manufacturing end of the business.

I know Charles H. Jones, of the Commonwealth Shoe & Leather Company. I was present at a meeting between Mr. Jones and Mr. Jonathan Brown at the statehouse in the spring or summer of 1911. I remember the conversation. Mr. Jones said to Mr. Brown: "We big manufacturers should have a lower royalty than the small manufacturers." I made no note of it at the time, but I did afterwards, because as a small manufacturer I was indignant that a man I had looked up to for so many years had plainly changed his attitude towards us. His point of view had changed since he had joined the Western Alliance.

We make slippers only, McKay and turn. I have had experience with the different kinds of sewing machines for making turn shoes, including the Lincoln, the Bay State, the Fowler, the

Looplock, and the Goodyear, which we are now using. We use the Goodyear on account of the seam it sews and the way it sets the stitch and in general the way it makes the shoes, and we now use a lighter sole with it. It is a better machine than those which I named, and the royalty has been reduced to one-half of what it was before the United Company was formed.

I had the other machines which I mentioned in my factory at the same time with the Goodyear machines, and the Goodyear beat them. In selecting the Goodyear as the machine to keep I was not coerced in any way by the United Company. I never yet was coerced by the United Company. It was the quality of the work and the fact that we could use a lighter sole which led me to choose the Goodyear. That saving amounts to two cents and a half a pair in the cost of the sole alone. We make that saving on the new Goodyear machine. That is built for running light soles. Turn shoes are made inside
876 out, are turned, and are then relasted and dried on the last.

I have had experience with nearly all of the heel-attaching machines other than those furnished by the United Company. We used the National for over ten years, then we took the United Company's Lightning machine. I told the United Company I would adopt their machines any time they could beat the other machines out. They did it, and I kept my agreement. The change was not the result of any coercion on the part of the United Company. It was due to the fact that the United Company beat the National machine one-quarter of a cent per pair in the operation. I can't tell now more definitely how I made that saving by using the United Company's machines, because the figures have gone from my mind, but I did it. I retained the figures for several years, and then naturally threw them away. They simply did it. I made a study of it at the time. I had to satisfy my partner and myself that the United Company's machines were better.

As to machines of any other class, where we have used United machines and machines of other manufacturers, the rounding machine, for instance, is a good machine to say a word on. We used the old Hartford rounding machine for rounding soles. They were built by the Hartford Company, and every season we turned in the old machine, paid $125.00, and got a new machine, because it wore out so fast and had so many parts. They were finally merged into the United Company, which immediately rebuilt all the machines and standardized them, and our repair bill today is about thirty cents a season. We have had two of the machines for a good while.

877 Cross-examination:

I have been in the business since 1872.

I did not have the Lincoln, Bay State, Fowler, and Looplock turn sewing machines all at the same time. I bought Lincoln machines at auction or any other way. I bought them at first from the Lincoln Sewing Machine Company. They cost eight hundred or eight hundred and—no, they were $1,000 with a discount, new. We bought the Bay State machines from the Bay State Sewing Machine Company, I think it was called. We paid about $850 for that machine. I don't remember what I paid for the Fowler machine. I was so sick of that I don't want to remember. It was all repair work, that was. We junked the machine. I don't know who put it out, but I know I had more trouble with repairs. The Looplock machine was made by a Haverhill manufacturer, Mr. Knight.

I took one of the Goodyear machines before the United Company was formed. I took it on there when they first put it out. I finally discontinued the use of the other machines and decided

878 to use Goodyear after they wore out. About five or six years ago, when I proved that we could do better work at less cost by running all Goodyear machines, we discontinued the use of the other machines and put in all Goodyears. I think we turned in most of the other machines to the United Company. I made a good trade, but I don't recall exactly how much was allowed. As to my best judgment as to how much I got, I haven't any. I don't remember whether I got an allowance of as much as $400 for the Lincoln machines.

I have bought some general department machines from the United Company, because I was obliged to buy them since this suit has been under way. Otherwise I would have leased them all.

Offhand I can not state when the royalty was reduced on turn work. I should say it might be a little longer than five years ago. As to whether at that time there was any other concern putting out turn sewing machines, there always has been. There was a company in Haverhill of which I don't remember the name.

We changed from the National heeling machine to the United Company's heeling machines, the Mayo on McKay work and the Lightning on turn work. I think we sold the National heelers to second-hand dealers. I had them on the floor idle for a year. I don't think I did turn those into the United Company. I saved a quarter of a cent per pair by changing heeling machines. This saving was on the operation. We could not nail shoes on the last successfully by the National machine without smashing

lasts. I can nail on the lasts by the Lightning machine so that I can run my shoes all the way through on the lasts, while before I had to pull out the lasts and relast the shoes again. The turn shoe is a light shoe.

We are using the United improvement on the Hartford rounding machine. All the machines in our bottoming room are United machines, except little minor machines that don't amount to much. The sewing machines, upper fitting machines, are not United machines.

879 JANUARY 6, 1914.

ELDEN EVERETT GRIFFIN, witness for defendants.

I live in Dorchester and am employed by the W. H. McElwain Company. I am now superintendent of the box and carton factory.

Formerly I was doing efficiency work on shoe supplies. That did not include a study of the cost of repair parts. Just before I left off working on supply efficiency I took a few figures at three McElwain factories covering a period of six months, to show the breakage of machine parts at each factory. I furnished those figures to Mr. Gleason, who has testified. Those figures were taken from the actual operation of the McElwain factories under everyday working conditions.

Cross-examination:

This information covered a period of six months in 1912 and 1913, and included all new parts installed. It covered the machines in the bottoming room and sole leather room, chiefly the bottoming room. It included channeling, tacking, assembling, pulling-over, and lasting machines and the welters and stitchers. I don't recall whether it included the leveling machines.

880 JANUARY 6, 1914.

EDWARD WILLETT BURT, witness for defendants.

I reside in Boston and am a shoe manufacturer and shoe retailer. My factory is at East Lynn, and I retail shoes in Boston and other cities. I manufacture welt shoes only, and make men's, women's, misses', boys', and children's shoes.

I have been manufacturing shoes in Lynn since 1900. When I left school I went into my father's factory, and learned the shoe business as an ordinary workman.

I got an idea of manufacturing women's shoes under a trademark name, and I went to Lynn and had lasts designed, patterns made, and got up some samples. The United Company made a few pairs of shoes for me, at their expense, in their office in Lynn.

My trade-mark was "Knickerbocker," and I now make a patented shoe under the trade name "Groundgripper."

When I started making shoes I made about twenty-five pairs a day. Now we average about 500 pairs a day. I am using United Company machines, and I use the form of lease which permits us to exchange the machines, if we desire, for new machines. I chose that method of obtaining machines because I want to get the very best machines I can secure. I believe the United Company's machines are very much perfected and are as good as can be made.

As to how large a factor the service which they give is in the successful manufacture of shoes, personally I believe that one of the chief things that a manufacturer should consider in the making of shoes is the service given in keeping the machines in continuous operation. It is very essential to have the machines always in running order at the least possible expense.

When I started making shoes I had an Eppler welter and an Eppler stitcher. I found them inefficient for making high-grade shoes. They were not anywhere near as satisfactory as the United Company machines.

881 With reference to the wear of the shoes made by the Eppler machines, we had trouble with the shoes made on the Eppler welt and stitching machines. The soles ripped off continuously, and the lock was not tight on those machines. We gave them a thorough trial; that is all we had in the factory. We tried them out for about a year, I believe.

My reason for making any change was because I could not afford to have the shoes wear out on account of imperfect construction. The United Company machines were shown to me to be better, and I exchanged and put in United Company machines. Not the slightest coercion was brought to bear upon me by the United Company to make the change. It was absolutely my own idea. I wanted the best machines I could get.

I have had experience with machines of manufacturers other than the United Company, including the National heeler, a heel breasting machine, a Tapley heel burnishing machine, a machine for branding soles, a Julian rounder and a hand perforating machine. I did not find those machines satisfactory, and as fast as possible I got rid of them and put in United Company machines to replace them.

For example, the National heeler was too slow and the large sizes could not be heeled on it. The parts were breaking continuously. The machine was stopped a good deal of the time. There was a repair man in Lynn who came over to repair the machine.

As another illustration, the Julian rounder was one of the most unsatisfactory machines I ever had in my factory. It would not round two pairs of soles at the same time. It would not round a size larger than eleven and my men's shoes run to size fourteen, and the largest ones had to be rounded by hand. The arm that adjusts the motion was continually breaking, and so were the knives. The steel did not seem to be of good quality.

We put in the United Company rounder in place of that machine, and I haven't heard one complaint from that room since it has been there.

We now have machines in different departments furnished by other manufacturers than the United Company, including a stud-setting machine, a branding machine, and, in the stitching room, a Fortuna skiving machine and a seam-rubbing machine. The branding machine, which we got from the Boston Last Company, heats an iron by electricity and prints the name on a piece of leather in the heel.

882 We formerly used the Peerless eyeleting machine, but about two years ago we changed to the United machine, because the Peerless machine was unsatisfactory. It did not run eyelets properly, and we had to have several raceways to fit different kinds of eyelets. We find the United machine more satisfactory and I think it is a better machine.

As to whether any pressure was brought to bear by the United Company to cause me to change from the Peerless to the United, never. I don't always tell the United Company when I change, and they would have no objections if I did.

According to my experience a shoe machine wears out very fast. The wear and tear is very hard. We figure about twenty-five per cent depreciation on machines which we have to take care of ourselves. It is very expensive.

Our business was incorporated in 1903, and the concern is E. W. Burt & Company, Incorporated. We are incorporated in Massachusetts with a capital of $50,000. Our gross sales in the factory in 1913 were about $300,000, six times our capital.

We have always taken our machines on royalty leases, not paying initial charges. I have done that because I prefer not to tie up capital in machinery. It is a very great expense and, in securing credit, bankers never consider machinery worth a dollar.

The United Company has furnished prompt and excellent service. That is absolutely important to the successful manufacture of shoes. We must have it. If our machine breaks down, every hour means so many shoes piled up behind that

machine. It simply stops orders and delays delivery of goods to the retailers. That is one of the chief troubles manufacturers have—canceled orders on account of delays. We must get out the shoes on time.

I am a small manufacturer. As to the effect upon my ability successfully to do business which a compulsory change in the method of leasing machines, making it necessary for the United Company to charge an initial premium when it put out its machines, would have, I am very glad you asked me that question, because I think it is a very important one. If manufacturers must buy their machines, they have got to get money from their capital, or borrow money, or get it somewhere, to buy machinery, and that takes away your working capital. Now, you must have machinery at the least expense possible in the manufacturing of shoes. And if we were obliged to buy our machines I should be very sorry. In fact, if the privilege of buying or leasing were given me, I should say lease every single time. I never would want to buy a machine.

883 As to the effect which it would have had with reference to my ability to go into business at all, I never could have started. I started without any money in shoe manufacturing. I was able to do that because I could obtain my machines by this method.

That is one of the greatest reasons why I could start in the shoe business—because I could get machinery with practically no expense.

I know that there are other men who from small beginnings have been enabled to start and grow. I have had experience along that line. I have had two superintendents leave me, both starting in the shoe business. They had practically no money. I guess that all they made was what they drew from me as superintendents of the factory. And they started in manufacturing shoes in Lynn, both of them. I will make it three. One of them to-day is one of the biggest manufacturers in the country. That is Mr. Hebert, of Cushman & Hebert, in Haverhill. They now have a very large output in McKay shoes.

Cross-examination:

I think the Eppler welter and stitcher that I used came from the Eppler Welt Machine Company. I got them in 1900. After using them about a year I believe we sold them back to the company at the best price we could get. I think that they were bought outright. As to how much we paid for them, I could not state offhand—probably about $300 or $350 apiece. I think they were sold back to the Eppler Company. Those were the only welters and stitchers I had.

When I first engaged in manufacturing in 1900 I had a Chase lasting machine for lasting men's shoes. I think I got that from the Consolidated & McKay Company.

Our heeling machine was the National heeler, and that came from my father's factory in Brookfield. My metallic fastening machines also came from his factory.

When I gave up the use of the Eppler welter and stitcher I took on the Goodyear welter and stitcher. I sold the National heeling machine for junk; I couldn't get a dollar for it as a machine. I also sold the Tapley heel-burnishing machine, which cost $1,000, as waste scrap iron to a second-hand machinery dealer.

884 I had used that a very short time. It was a very old machine—had been in existence a long time. Before that it had probably been used for ten years in my father's factory.

I sold back the Julian rounder to the Boylston Manufacturing Company, who made it. As I remember it, they allowed me from $75 to $100 for the old machine which I had paid my cash for. The Peerless eyeleting machine is in the stitching room now, under the bench somewhere. We are not using it.

The cost of repair parts and repairs on machines is very small. I have some figures here, $148,500—the manufacturing expense was .052. By manufacturing expense, I mean our machinery expense. That does not include royalty—just parts and repairs. That is the percentage of the sales.

Direct examination resumed:

I think I bought the machines from the Eppler Company in 1899 or 1900. I will look up the leases and ascertain whether we bought them or not.

We now have the latest designs of the United Company's welter and stitcher. We have an operator on the welter who can do thirty dozen pairs of men's shoes a day. The most that the same operator could get out of the old machine was twenty-five dozen pairs a day. The production on the new stitcher is about three or four dozen pairs a day more than on the old machine.

Cross-examination resumed:

We got the new machines within the last two years. I will ascertain the date exactly.

885 JANUARY 6, 1914.

JOHN STROOTMAN, witness for defendants.

I reside in Buffalo, New York, and am engaged in manufacturing ladies' shoes. We manufacture from eight to twelve hundred pairs a day. About half our shoes are McKays and half are turns and welts. We take perhaps fifty per cent of our machinery from the United Company. I have been in business

since 1873 and have had all kinds of experience with owning machinery.

We take our machinery from the United Company on the restricted form of lease because we like it better.

We have the new welters and stitchers. We obtained them within a year or two, and we find that they are about one-third more efficient. They are doing more work and better work. The model K welter saves from an inch to perhaps an inch and a quarter of welting on one shoe. We pay from four and a half to five cents a yard for welting, and the saving is about a quarter of a cent a pair.

PUTNAM, J. Do you make any contest about these savings, Mr. Gregg?

Mr. GREGG. Well, there is no contest on this point, that the welt-cutting device, perhaps, saves more of the welt. However, the report made by their experts on the Plant machines showed that they had at that time a welt-saving device.

Mr. FOWLER. I may say that we do not intend to offer any evidence tending to show that this machine, which automatically cuts off the welt, probably saves some welt. We may want to ask some questions showing that if operators are properly instructed they might by hand save more of the welt than is saved—something of that kind.

The WITNESS. I have had experience in using machines of other manufacturers with machines we obtained from the United Company. We use the Haverhill machine for channeling turn shoes which are sewed on the United Company's welt and turn machine. We are also using United Company channeling machines right next to the Haverhill machine. The United Company has never made any objection to our using the Haverhill machine, and has never attempted to use any coercion to get that machine out of our factory.

886 We also have another stitcher there for stitching McKay edges. I can't just get the name now at this moment.

We also have a McKay sewing machine which we did not obtain from the United Company. We bought it, but I don't recall where. There is no difficulty that I know of about buying McKay sewing machines. As to whether I can get them wherever I want to, I haven't tried to get them. As to whether, so far as I have had any experience, there is any difficulty—well, I could get them any time, I suppose, from anybody.

Our heeling and metallic fastening machines came from the United Company. I think I have had no experience with machines in either of those departments obtained from other people.

As to the period when we owned machines, the depreciation varied on different kinds of machines. On some I wouldn't count over ten per cent depreciation, but I bought a triple Tapley burnishing machine for $1,500, I think, and used it
887 only about fifteen days when the rotary brush system came in and superseded it. We sold it for junk, and that was a very large depreciation. That was an uncommon experience, but it frequently occurred that a machine that we had bought had become out of date in a short time. Then we sometimes traded off the machine for a better one and sometimes sold it for whatever we could get for it as old iron.

The service which the United Company gives us is excellent, and it is an all-important factor in the manufacture of shoes. We could not run a factory without the company's skilled men to keep the machines in order and keep them running. So far as I know, no other company furnishing shoe machines gives service of that kind.

Cross-examination:

I have no recollection whether any other form of lease than the restricted lease was presented to me when I took machines from the United Company. I examined the unrestricted form of lease about two or three years ago—went over them very carefully.

I have been running continuously since 1873, and have been making ladies' shoes all the time. At first my shoes were hand sewed, and the first welting machine I had was the Goodyear. I never used any other kind.

We lasted by hand until we got the Consolidated hand-method machine, and we are still using improved machines of that type. Formerly we lasted our shoes entirely on that machine, but now we last the toes on the No. 5 machine and the sides on the Consolidated hand method. We do not make any men's shoes.

We have two improved welters, one on welts and one on turns; we make about three hundred pairs of welts a day.

Q. There has never been a time when any of the machines that you have used, any of the welting machines you have used, could not have turned out as many as 300 pairs; isn't that true?

A. Well, yes. You see our shoes we manufacture for the stores, and consequently the lots come through in small lots, a variety of different kinds. A man can't quite do so many.

Q. Didn't your old Goodyear machine do as many as 300 pairs a day?

A. That depended on the man. A good man could possibly do that.

Q. If you welted just as many pairs of shoes on the old machine as you do on the new machine, then you get no more efficiency out of the new machine than you did out of the old, is that true?

A. Why, we get more efficiency in the welting saved, and also in the more perfect work. We get a better stitch and each side of the welt near the heel, where the old machine used to leave a little imperfection, this machine does more perfect work.

888 So far as I know there was practically no improvement in the welting machine from 1899 up to 1908. We used the model G machine, and that is what I call the old Goodyear machine.

We have had the Haverhill channeling machine for perhaps six or eight years. We leased it on a royalty. The use of that channeling machine does not affect the royalty we pay the United Company; that is, if we used instead of it the United Company's channeling machine, it would be an auxiliary machine and there would be no royalty paid on it. If we were to install the United Company's machine instead of the Haverhill machine and quit using the Haverhill machine, I think we would not pay the United Company any more royalty than we do now. We are using that Haverhill channeling machine notwithstanding the fact that it requires us to pay royalty on it which we would not have to pay if we substituted the United Company's channeling machine for it. We also have a United channeling machine, and we are using both machines.

We have two McKay sewing machines, but are using only one. We have had that a good many years—twenty years. We bought it outright, and have used it ever since. I have no idea what it costs to keep it in repair. Some machines cost more to keep in repair than others, and some machines become obsolete more quickly than others on account of superior machines taking their places. The improvements on the principal machines, the large heavy machines, have not been so rapid as on some of the less important machines. They are used for a great many years.

Q. You spoke of the service of the United Company. You haven't had any experience with the service of any other company, have you?

A. There isn't any that I know of.

Q. As a matter of fact, there is no other concern putting out sufficient machines to justify them to have a service; isn't that true?

A. I guess so.

We never tried to organize and keep up a repair service of our own. I don't see how we could do it. We have an expert machinist to keep the Singer sewing machines in the stitching room in repair, and we sometimes call in the Singer people. We get the repair parts for our stitching room machines from the manufacturers. We never tried keeping a skilled mechanic to keep up the machines we leased from the United Company.

Direct examination resumed:

The machines we bought of the Singer people are simply sewing machines. I did not mean to state that the welt machine had not been improved between 1899 and 1908. I think it has been improved from time to time. I may have had the model E welter at some time. I did not know it by that name. These letters confuse me. I don't remember them by the letters.

889 Cross-examination resumed:

I do not know how much royalty we pay per annum to the United Company.

890 JANUARY 6, 1914.

JOHN F. BELCHER, witness for defendants.

I live in Brocton, and I am superintendent of the Churchill & Alden shoe factory at Campbello, in Brocton. In January, 1904, I had charge of the purchase of supplies for that factory. I know Irving A. Hadley, formerly of the firm of Kimball & Hadley which manufactured awls and needles. As to Mr. Hadley's testimony that in January, 1904, he was told by the person in charge of purchasing in our concern that using his awls and needles was in violation of our leases with the United Company, and that if we took his awls and needles the United Company would take its machines out of the factory, I did not make any such statement. The fact is that the reason why I stopped taking needles from him was because he told me he was going out of business. I never told him that my reason for stopping taking needles from him was that if I did the United Company would take its machines out of our factory.

Cross-examination:

During my conversation with Mr. Hadley nothing at all was said about the leases which we had with the United Company. I am positive that the United Company was not mentioned.

891 JANUARY 6, 1914.

ARLON S. ROBERTS, witness for defendants.

I live in Brockton, and I am assistant superintendent in the factory of E. E. Taylor Company. In January, 1904, I bought all of the making room supplies for that concern, including

needles and awls. No one else had charge of buying needles and awls at that time except myself.

I used to know Irving A. Hadley, of Kimball & Hadley, and I used to do business with him. As to his testimony that in January, 1904, our factory refused to take any awls or needles of him, stating that using them was in violation of our leases from the United Company and that if we took them the United Company would take all of their machines out of our factory, I did not make any such statement to him.

I recall buying slugging awls from Mr. Hadley, but I did not buy many needles because I did not like his needles. I stopped buying from him because he went out of business. That was the only reason. It was not because of anything that the United Company did or said, or because of any lease that we had from them.

The United Company has never required us to buy needles and awls from any particular source. We have bought them wherever we saw fit. We have bought some from the United Company. We have also bought them from the Sewing Machine Supply Company and from the Boylston Manufacturing Company, without any interference from the United Company.

Cross-examination:

I didn't say that I bought all the supplies in 1904, but I either placed the orders or they were brought to me to place. I had an assistant by the name of J. J. Tierney, who bought some of the supplies for the Taylor Company. I do not remember having any conversation with Mr. Hadley in 1904 in regard to the purchase of needles.

892 JANUARY 6, 1914.

WILLIAM A. HOGAN, witness for defendants.

I am in business in Brockton with the T. D. Barry Company. I was connected with that concern in January, 1904, and was in the office. I confirmed all orders for supplies, such as needles and awls.

I know Irving A. Hadley, of Kimball & Hadley. Our concern bought needles and awls of him. As to his testimony that about January, 1904, we refused to buy needles and awls of him, giving as a reason that it would be a violation of the conditions of our leases with the United Company, and that if we bought his needles and awls the United Company would take all its machines out of our factory, no such statement to my knowledge was made to Mr. Hadley. We did not stop buying of him for any such reason. We did stop about that time because he went out of business.

Cross-examination:

I confirmed the orders for the purchase of supplies. The foremen, John J. Brown and John Murphy, bought them.

I was present when Mr. Hadley told our foremen that he could not sell us any more awls. He gave the reason that he had sold out to the United Company. Prior to that time I was probably present when the orders were placed. I will not say that I was always present.

Direct examination resumed:

It was my practice usually to be present.

893 JANUARY 6, 1914.

HERBERT L. CANN, witness for defendants.

I live in St. Louis, Missouri. I am local manager for the United Company in the St. Louis district. I have been in charge there since the latter part of 1910.

The factories of the International Shoe Company, of which Mr. Jackson Johnson is president and Mr. Frank Rand is secretary, are in my district. I know Mr. Rand. Their factories are served with men and repair parts from our headquarters. I have forty-six roadmen or repair men under my charge.

In connection with Mr. Rand's testimony that the cost of repair parts in their country factories where they supervised the inserting of repair parts was very much lower than the cost of repair parts in their city factories where we supervised them, I made an examination of our records to find out what the cost of the repair parts to the International Company was in its city and country factories. My investigation covered the period from December, 1912, to May, 1913, the six months preceding the time when Mr. Rand made his statement. I took their country factory at Cape Girado, where they make men's Goodyear welts, and their Glasgow factory, in St. Louis, where they make a like quality of men's Goodyear welts. Repair parts are supplied and repairs are made by my men in both factories. The Cape Girado factory is about 125 miles from St. Louis. The Glasgow factory is within the city limits of St. Louis.

During the six months covered by my investigation the average cost of repair parts per leased machine was about $16.48 at the Cape Girado factory and about $12.50 at the Glasgow factory, about twenty-five per cent more in the country factory than in the city factory. I regard those figures as a fair average rate. Those factories both make men's welt shoes and I selected them because they are so nearly alike in their product. The

894 country factory manufactures about 3,300 pairs a day, and the Glasgow factory about 2,700 pairs. They are typical factories of that company.

I know about the Hercules leveler which Mr. Rand testified about and I have seen the machine. The part which was broken was not a thing that supports the machine, but it was one of the two legs—we call them spindles—which support the last with the shoe on it and are operating parts of the machine. This spindle is about sixteen inches long and the bottom is made of the best grade of wrought iron and the top is made of machinery steel. The top piece is V-shaped and it fits in a corresponding recess in the bottom part and is welded to it. In the operation of leveling the sole the top part sometimes breaks, and it was that part that was broken in Mr. Rand's machine. All he did was to put a new top on, consisting of about four inches, out of a total length of sixteen. At first they did not fasten the top to the bottom part, but afterwards it began to work around and it was then brazed. That is all the work that was done at that time.

They continued to use those repaired spindles for a year or more, and then replaced them with new spindles obtained from us.

I know Warren F. McElroy, who was connected with the Hamilton-Brown Shoe Company, which is in my district. As to Mr. McElroy's testimony that Mr. Kenney told him in 1904 that he could not get any more repair parts for the Copeland rapid lasting machine, Mr. Kenney was then the manager of the St. Louis office and I worked as a roadman under him. Mr. Kenney died in September, 1910.

I examined the inventory of our office taken on February 28, 1905, and that shows that there were 1,100 Copeland parts in the St. Louis office at that time. That stock probably covered all parts that would be needed to repair the machine in case of breakage.

I have no personal knowledge as to the Hamilton-Brown Company's changing from Copeland rapid lasters to the Consolidated hand-method machines. I was visiting the Hamilton-
895 Brown factory in 1904 as a roadman. It was never brought to my attention that they were not getting all the repair parts that they wanted for the Copeland rapid lasters, or that that was given as a reason for changing from the Copeland machines to the hand-method machines. No complaint whatever was brought to my attention. I was probably visiting their factory three times a week. My duties were concerned with the metallic department machines, and I had nothing to do with the lasting machines.

It was our practice, and all our roadmen are instructed to put no new parts on a machine unless they are absolutely necessary. We do not put on repair parts when they are not needed. The

St. Louis office is not doing business that way. If they are, I don't know it. I don't mean to have them.

Cross-examination:

Mr. Kenney was looking after the repair parts for the Copeland rapid lasting machines, and I had nothing to do with it. Our records show that there were 1,100 parts for the Copeland rapid lasting machine in the St. Louis office at the time the inventory was taken. Whether Mr. Kenney actually furnished repair parts to Mr. McElroy is something I know nothing about.

The company's price for one of the spindles or legs for the Hercules leveling machine was not $25.00. It was $10.00. That would be $20.00 for the pair, but they never break two at one time.

I do not know what particular occasion Mr. Rand referred to in his testimony, unless it was a period of perhaps two years when they tried out the method of repairing machines themselves. My attention was first called to it by seeing the spindle in their machine shop. I then saw only one broken spindle, but I saw probably half a dozen of the tops they had made themselves. That was in the machine shop of the International Shoe Company at St. Charles, Mo., and I inspected that machine shop about three years ago.

896 The difference between $16.48, the cost of repair parts for the country factory, and $12.50, the cost of repair parts for the city factory, was due largely to the men operating the machines. When we send a man to their country factory we don't make any charge for his labor or for his railroad fare, or for his expenses. We only charge for the parts necessary to put the machine in order. My figures are for the six months immediately preceding Mr. Rand's testimony. I do not know to what period of six months Mr. Rand's testimony related.

During the six months for which I investigated our books the International Company was not, to my knowledge, attempting to keep their machines in repair in their country factory. We were sending our men to those factories just as we always did and we were making all the repairs which we were called upon to make, and all that we thought was necessary. If they made repairs with their own machinists, I was not aware of it.

Direct examination resumed:

The difference between the cost of the repair parts at the country factory and the cost at the city factory was due to the difference in the operatives of the machines. The city factories have a better grade of operatives, and the men are more expert. The country factories use more or less inexperienced labor, and

there is more breakage of machinery. The six months which I took for this comparison was an ordinary, average period.

Cross-examination resumed:

In testifying about the cost of repairs I included welting, lasting, pulling-over, heeling, standard screw and loose nailing machines, practically all the machines used under their contract. Some machines cost more to keep up than others. We had to strike an average in figuring the costs because a great many of our parts are standardized and can be used on perhaps a dozen machines, so that there is no way for us to know on what machine such a part was used.

The charge for repair parts in St. Louis is the same as here in Massachusetts. The price is the same to all, regardless of location. The parts are all manufactured in Massachusetts, but the United Company pays the freight rates to St. Louis.

897 JANUARY 6, 1914.

CHARLES A. EATON, witness for defendants.

I live in Brockton and my firm is the Charles A. Eaton Company. We make men's welt shoes almost exclusively, a few ladies' and boy's shoes. Our output is at present 2,400 pairs. I have been manufacturing shoes since 1879. From 1882 to 1892 we made a very large proportion of McKays and a very small proportion of welts. Commencing in 1892, when the present company was organized, we changed largely from McKays to welts; so since 1892 we have been very largely employed in making men's welted shoes.

We take a very large proportion of our machinery from the United Company. We chose the restricted lease because we felt that it was for our interest. That was because we were relieved from a large investment of capital, and because we believed that the development of shoe machinery was along that line and and that we should get better and improved service by so doing.

I have read the leases. The restrictions do not affect our activities at all. We have full confidence in the management of the company as indicated by their dealings with us since it was formed. They have not taken advantage of the technicalities of their leases to the extent that they could. They have been lenient in all their dealings and in the exchange of machines. Their policy has been very liberal, and they have kept the machines up to date. As new machines were brought out they have exchanged the old ones without any return payment or any charge to us, except for missing or worn parts and freight charges. Those are all the charges that have been made to us

on account of the replacement of machines during these years of development since we have done business with the company.

The welters, rounders, stitchers, and lasting machine outfits have been most radically developed of late years. As to the development of lasting machines previous to the formation of the United Company, we used the Consolidated hand-method and the Chase machines.

898 A year or two before the United Company was formed we had trouble with the Chase people, because they refused to furnish agents in accordance with the terms of their lease unless we threw out the hand-method machines we were using. Accordingly, we boxed up and returned all the Chase machines and put in Seaver machines, so that when the United Company was formed we were using Seaver and hand-method lasting machines. We used the Seaver machines on men's welt shoes, and the hand-method machines on the cheapest grade of welted work.

After the formation of the United Company we changed to the Chase machines. We wished to make that change and the United Company furnished us with Chase machines as long as we wanted them. Later we changed from the Chase machine to the No. 5 machine. That was certainly an improvement on the Chase machine. The main points of superiority of the No. 5 machine over the Chase were in the volume and the quality of the work that the No. 5 would do, particularly the better work at the toe. I don't know as the capacity of the machine was much increased.

Two years ago we put in the Rex system of machines for assembling and pulling the upper, preparing it for the No. 5 machine to operate on. That process has been a great saving, and there has been a decided improvement in the work. The saving on the prices for running the machines established by the State board of arbitration, at the instance of the Boot and Shoe Workers' Union and the Boston Shoe Manufacturers' Association, amounts to six cents per hundred pairs on dull leathers, $1.62 per hundred pairs on tan leathers, and $2.25 per hundred pairs on patent leathers. That is a saving resulting from the Rex system of lasting—the latest development of the United Company. We get the benefit of that saving and, in addition, the operators are benefited. Their earnings are invariably larger.

Another saving which we make by the Rex system is thirty cents per hundred pairs on the cost of restoring tips and vamps which are damaged in lasting. During the past eighteen months, since we operated the Rex system, that expense has been reduced

from seventy-five cents per hundred pairs to forty-five cents per hundred pairs. That saving is all due to the Rex system.

899 We have a factory at Brockton and one at Augusta, Maine. At Augusta we formerly used the model G welter, and now use the model K.

We have found that the saving in welting by the model K welter, as compared with the model G welter, was five per cent, under exactly similar conditions. That saving would vary from a minimum of three per cent, in comparison with the old style machine run by a careful operator, to a maximum of five per cent. The minimum of three per cent saving would amount to seventeen cents per hundred pairs. The work on either machine was satisfactory. We have not yet succeeded in reducing the piece price which we pay operators for running the welter, but we are negotiating now with the operators.

Our stitcher will show an advance by comparison with the same operator under the same conditions a fifteen to twenty per cent increased capacity over the old, because it is a higher speed machine and its takes less operations to work it. And if we fail to get the reduced price that we are entitled to and that the operator can reasonably submit to, it is our own fault and no fault of the machine at all.

The service which we have received from the United Company has been very satisfactory indeed. All manufacturers depend very largely upon it, and in our own case we have considered it of vital importance.

There are continually little annoying problems and difficulties that are arising in the development of the industry that by appealing to them we could get in touch with some method that they have seen in operation in some other factory where that same factor has arisen, and it has been satisfactorily solved, and they give us that information. So it is an interchange of ideas, continuously between the factories, which relieves many difficulties and makes it much more easy to do business.

I don't recall that we have had occasion to use machines of other makers of kinds which are supplied by the United Company.

900 As to the comparative advantages, from the shoe manufacturer's point of view, of buying machinery or leasing it, I think it was in April, 1908, that the question came up with the board of assessors in Brockton in regard to what constituted a fair valuation of shoe machinery that should be operative throughout the city. I was on a committee of Brockton shoe manufacturers which took up with the board of assessors

the matter of developing some method of assessing shoe machinery that would be fair both to the city and to the manufacturers. It was agreed that the United Company's replacement valuation of all their leased machinery as it appears upon their books and directly charged to each factory, should be accepted by the assessors as representing sixty-five per cent of the total valuation of all shoe machinery, including machinery leased and owned outright, with which that plant might be equipped. The replacement valuation on the United Company's records was considered as sixty-five per cent of the entire shoe machinery investment.

As to my experience with reference to depreciation of shoe machinery, on our common line of machinery we have charged a depreciation of ten per cent per anuum plus the cost of additions or improvements over a fixed amount. We have tried to keep our machinery item at a fixed figure, and all our improvements or additions we have charged off directly. Besides that we have stood a shrinkage of twenty per cent per annum.

As to our experience prior to 1899 with reference to finding that machines had become out of date or superseded by others, our experience was that there was continual change, which was rapid in the line of all shoe machinery, and I think it was viewed more by manufacturers, it was by myself—in considering the shoe machinery question, the valuation of it, we treated it more from the standpoint of the individual machine—each machine by itself. Now, of recent years, since the change in the methods has come about, we have considered the general shoe machinery line more of a unit. Instead of regarding each individual machine as an individual, it is part of the whole, and we have
901 handled our shoe machinery question on that basis, as if each machine were a part of a general machine for the purpose of making shoes.

Since 1899 the developement in shoe machinery has been fully as rapid as before 1899, and it has been more cautious. The changes have been less radical, but they seemed to be tested out so that they were logical and practical. It has been a gradual and intelligent development right straight along. Before 1899 we would get the best available machines and would run them a short time, and then new machines would come along and the machines which we had would be junked. As to whether that system resulted in necessary repeated loss to the manufacturer who bought his machinery, yes, I should think it would be heavy, because our investment was sixty-five per cent—heavier than it is now.

Cross-examination:

Before 1899 we used the Consolidated hand method, Chase and Seaver lasting machines. We were making welt shoes chiefly between 1892 and 1899. We replaced the Chase machines with the Seaver on the better grade of work, and were doing the cheaper work on the hand-method machine. The welted shoes which we were making at that time were men's exclusively. We used the Seaver machine for a year or a year and a half, and exchanged with the United Company for the Chase machines right after the formation of the company. The Seaver machine was put out by the Seaver Lasting Machine Company. I think the United Company bought their patents.

We continued to use the Chase machine until we took the No. 5 machine, and, I think, we also used the hand-method machine for a while. As to how long it was that we used the Consolidated hand method machine on welt work after the formation of the company, if my memory serves me, it might have been three or four years, possibly. We took the No. 5 machine very soon after it was first put out.

The company has been very prompt in giving us improved machines. I have examined their leases, and it has always been my feeling that they haven't been so stringent as they could in enforcing the terms of the leases.

902 We have six welting machines in Augusta, and four or five in Brockton. I have never tried to obtain a welting, a lasting, a metallic fastening or a heeling machine from any other concern since the United Company was formed. We have not violated the leases, except that we have not always paid our royalty on the day when it was due. We have tried to work together because I feel as though it was a mutual game, and we are both benefited. I believe their method is founded on the principle of progress.

I have not examined machines manufactured by any other concern, but if I knew of any process that I thought would bring better results I should be only too glad to examine it. In answer to your question whether as a matter of fact any other concerns, except two or three small ones, are putting out machines, that may or may not be true. I haven't been looking about for other sources to go to to obtain my machines. I don't know of any other system of shoe machinery. This the only system that is strong enough to commend itself at all. This system is the only one I ever had in mind; it is good enough for me. I want to stick to it untill I can get something better.

The pulling-over system is a new system of machines supplementing the lasting machines. We pay an additional royalty

of a quarter of a cent per pair for the pulling-over machine, and an eighth of a cent per pair for the assembling machine, but the savings are in excess of the royalty. The pulling-over machine is almost human and its work is wonderful. It betters the operator's condition too; he earns more money.

I have no idea how rapidly the shoe machinery business would have developed under another system. I am not familiar with any other system.

On the model K welter we make a saving in welt alone of from a mimimum of three per cent to a maximum of five per cent. We haven't as yet reduced the price paid the operators. I don't know why the same machine wouldn't save just as much if it were manufactured and put out by Mr. Plant. In respect to the saving qualities it makes no difference where the machine comes from.

903 We never tried to keep an expert mechanic of our own to keep our machines in repair, except in the stitching room. We have an expert machinist who looks after the machines in the stitching room. Those machines are very simple in their construction, and there are not the intricate difficulties that there are with a general line of machinery. As to the Reece buttonhole machine, we have to depend quite largely upon their agents.

We never undertook to keep up the United machines in any other way except through the United Company. They have specialists who are especially fitted for different groups of machines. For example, they have a set of men who specialize on metallic machines and another set who specialize on welt stitchers. I don't think we could find one general mechanic who would be equally competent and skillful over the whole line; and also he would be out of touch with the experiences of other factories, which is an important factor.

We probably pay the United Company $50,000 to $75,000 a year as royalty. As to whether I could keep a great many machines with that amount of money, it isn't only that I figure this way: That every competitor is under those same conditions, and every man connected with the industry and the same consumer is getting an equivalent in the return for that payment. I am figuring it in this way: That I know that no other man in the manufacture of shoes can get any advantage over me on the shoe machinery question. As to whether that is a thing that is especially pleasing, that is one element; but beyond that I witness a value in equivalent in return for that money that I pay, and it isn't a tax on me; it isn't a tax on the public. There is a benefit; there is the labor that is returned

as an equivalent for that money, and that amounts to five cents a pair, perhaps.

Q. That is, regardless of the skill of another manufacturer, or the amount of capital that he may possess, you know that he can get no advantages over you so far as the——

A. I should hate to believe that that is so.

Q. And that is the reason you are so pleased with it?

A. I believe the small manufacturers, who make the least number of shoes, can get equally the same terms that I can.

Q. He stands on the same footing as Mr. McElwain or the International Shoe Company, or any of the other companies?

A. Yes, sir.

904 JANUARY 6, 1914.

JONATHAN BROWN, JR., witness for defendants (recalled).

Cross-examination resumed:

At the request of counsel for petitioner I have prepared a list of the concerns from whom we can buy McKay sewing machines. It is as follows:

Boylston Manufacturing Company, of Boston; J. S. Holt & Company, of Boston; Hamel Shoe Machinery Company, of Lynn; Haverhill Supply Company, of Haverhill; Lynn Supply Company, of Lynn; Shawmut Machinery Company, of Boston.

Those are the concerns to whom we always go to obtain McKay machines. I do not know of any other concerns than those, excepting the United Company, that manufacture or put out McKay machines. We have always obtained all we wanted through those concerns. All the second-hand dealers have them.

905 JANUARY 6, 1914.

C. WILLIS BENNETT, witness for defendants.

I live at Fitchburg, Massachusetts, and my business is shoe manufacturing. I make women's, misses', and children's McKay sewed shoes. I have been manufacturing on my own account for nine years. Before that I was with E. N. Dickinson & Company, a shoe manufacturing concern in Fitchburg, for twenty-five years. During my last few years with them I was in full charge of the factory end of the business. I went in there as a boy.

When I started out for myself I got my machinery from the United Company and from the Singer, the Union Special, and the Wheeler & Wilson Companies. I make from 800 to 1,400 pairs a day, depending upon the season.

I took my machines from the United Company on the restricted form of lease without initial premiums. I chose that form

because I had a very small capital when I started and I didn't care to lock up so much money in machinery. I had been a superintendent and had saved some money. That is all I had to start with. Well, I formed a stock company.

As to what the United Company did in the way of setting up my factory, there was a vacant factory there in Fitchburg, and when I got through with my old concern I had no idea what I should do, and some of my friends suggested that I form a little stock company and take this vacant factory and go into business on my own account, which I finally decided to do, and I went to the United Shoe Machinery Company to see if they would give me a line of machines, and they stated they would, and I had a few samples made down in Lynn and went on the road and sold some shoes. During my absence the United Shoe Machinery had their expert mechanics there laying out my factory and setting up the machines, and when I returned on the first day of April, 1905, with orders for shoes, they had my factory all equipped ready for me to start; and all those who visit my factory say that I have one of the best equipped and up-to-date factories in the State, and I want to say also that they did this without any expense to me.

As to how detailed the work of their experts was in laying out my factory, in the first place they had an expert come there who thoroughly understood laying out a factory, and told me what size shafting I would require, what size pulleys I would require for running different machines. They chalked out on the floor the location of the different machines that would make my work go along in the best manner from one operation to another, and, as I say, when the whole factory was completed I had a thoroughly equipped factory.

906 I was free to exercise my own judgment in the selection of machines, as to taking their machines or the machines of others, and I did so. Whatever machines I took I found had been arranged for and set up by the United Company, and they had my factory ready to run.

As to my experience with them with reference to service, why, their service has been, I might say, indispensable. I don't know what I should do without their service. Whenever I have a machine break down, I immediately telephone to their branch office at Marlboro, and they have a man come up there from Marlboro, who is an expert on that particular machine, to put the machine in order, and they do all this without any expense to me, aside of course from the cost of the broken part of the machine, if there are any parts broken.

When I started in Fitchburg there was only one shoe factory there, and there were no shoe makers in Fitchburg outside of that factory. Consequently I had to teach a good many operators. The United Company furnished their agents and expert instructors to instruct the help, and made no charge for it. I have also received assistance from them as to improved methods of manufacture. Their agents are all the time telling us of improved methods which they have seen in other factories.

As between purchasing machinery, or obtaining it upon an independent lease with an initial premium, or obtaining it on the restricted form of lease which I have, the restricted lease was the most advantageous because I had no money to tie up in machinery.

Had I not been able to obtain my machines in that way, I would not have been able to start in business at all; never could have started if it hadn't been for the United Company.

As to whether I know of others who were situated as I was, why, I have heard of others that started in similar. I don't know that I could name them, but I know I have from time to time heard of them.

I do not find anything irksome or difficult about the clauses in the leases limiting the use of our machines. I have read the leases.

I own all my stitching room machinery and I have made a practice of depreciating the machinery which I own about twenty per cent every year. I include in the term "machinery which I own" not only my machines, but my lasts and patterns. I use McKay sewing machines and lease those from the United Company.

907 Cross-examination:

I was engaged in business in 1905. I did not make any effort to get machines from any other concern except the United Company. I don't remember that I made any inquiry as to whether I could get machines elsewhere. I know that there were other machines that I could have bought. I could have obtained bottoming room machines from the Bresnahan concern in Lynn. I think I could have got them in 1905.

My understanding of the restricted form of lease is that there is no initial payment. Some machines—we pay so much a month for the use of the machines. I suppose that is what you mean by the restricted form.

Before the United Company installed their machines there was nothing in the factory except the engine and boiler. I did not sign the leases until after the machines had been put in.

All the machines in my bottoming room, except the fairstitch machines, are United Company machines. I do not know what the cost of parts amounts to per annum in my factory. I never figured it up. I do not know what my total royalties amount to per year. They are a little less than a cent and a half a pair on the average.

908 JANUARY 7, 1914.

JAMES J. TIERNEY, witness for defendants.

I live at Holbrook, Massachusetts, and I am with Cass & Daley, shoe manufacturers at Salem. In 1904 I was with the firm of E. E. Taylor & Company, of Montello, in Brockton. I was working under Mr. Roberts and my duties included the purchase of all the supplies from the levelers to the edge setters, inclusive, including slugging awls.

I knew Mr. Hadley, of the firm of Hadley & Kimball, who dealt in awls and needles. As to his tastimony that the people having to do with purchases in the E. E. Taylor & Company factory declined to buy awls and needles of his concern in 1904, saying that if they did so the United Company would take away all its machinery in the Taylor factory, I positively did not make any such statement to him. To my knowledge no such statement was made by anybody in the purchasing department. We had been buying awls and needles of Mr. Hadley, and we continued to buy as long as he was in business and had awls to sell. He gave us notice that he was going out of business and asked us if we wanted some more of his goods, and I stocked up on slugging awls.

Mr. Bryant purchased for the end of the room over which he had charge, called the Goodyear end, and he, Mr. Roberts, and I were the only men who would buy awls and needles for the making room.

Cross-examination:

I had no more conversation with Mr. Hadley than what I have just stated in respect to purchasing awls and needles. On one of his visits he advised me to stock up on slugging awls, and I did so.

909 JANUARY 7, 1914.

WILLIAM O. BRYANT, witness for defendants.

I live in Brockton and I am the Mr. Bryant referred to by the last witness. I worked for E. E. Taylor in January, 1904, and had to do with the purchasing of awls and needles for the Goodyear welter and stitcher. I knew Irving Hadley, of Hadley & Kimball. As to his testimony that in January, 1904, the Taylor Company through its purchasing department declined to buy

any more awls or needles of him on the ground that if they did the United Company threatened to take away all its machines, I did not make any such statement to him, and I do not know of its being made by anybody else. I bought awls and needles of him every time he came into the factory to see me until he went out of business. At that time he said something to me about stocking up.

Cross-examination:

I had personal conversation with Mr. Hadley. I do not recall any such conversation about the purchase of awls and needles when the United Company was mentioned.

910 JANUARY 7, 1914.

CROSS JOHNSON, witness for defendants.

I live in the Roxbury district in Boston and I work in the Thomas G. Plant factory. I do side lasting, which is a hand operation. I have worked in the Plant factory for about fourteen years, lasting and pulling over.

I know Frank Morrison and have known him since I came to this country, fourteen years ago. I worked with him for six years at the same bench. In June, 1910, we were both doing pulling over in the same room. We were good friends. I knew about the trouble in the lasting room ~~on~~ May or June, 1910. We tried to make a strike and the morning when we were going to start it they caught us outside. Mr. McGaffee, Mr. Tom Plant, and Mr. William Plant took us into their rooms and talked it over and they gave us satisfaction. They raised the prices.

They had put lasting machines in and they were slower, so that the pullers did not earn so much. Before we went to see Mr. Plant the toe lasters had received a raise in wages.

Q. Now, who were the men that you say wanted to strike? The side lasters or the pullers over, or who?

A. All over the lasting room.

Q. And not men who had already got the raise?

A. No.

Q. Were you on any committee?

A. Yes. I was a committee that time when they caught me outside.

Q. Who else was on the committee besides yourself that you remember?

A. Well, a few fellows.

Q. Can you remember any of them?

A. Yes; I know every one of them, but I can't tell the names.

Q. Do you remember whether Morrison was one?
A. Yes. No; Morrison was not in the office that morning.
911 Q. He was not in the office that morning.
A. No.
Q. Now, did you know of Morrison trying to form a union at all?
A. Well, I don't know anything about it.
Q. Did you know of his spending any money among the men?
A. I don't know.
Q. Did he spend any with you?
A. No.
Q. Or, to your knowledge, did he spend any with anybody else?
A. I don't know; but not with me.
He never took me or any other men out, that I know of, ~~of~~ give us dinners or lunches, or to take us to the theater, or to meetings or things of that sort. After the day we saw Mr. Plant and went to work in the afternoon there was no more trouble and that was the end of it.

Cross-examination:

No one ever asked me to become a member of a union of the employees in the Plant factory.

912 JANUARY 7, 1914.

BENJAMIN EPSTEIN, witness for defendants.

I live in the Roxbury district in Boston and I am now working as a side laster in the Williams & Clark factory in Lynn. I worked for ten years and a half at the Thomas G. Plant factory in Jamaica Plain until 1912. I was lasting sides by hand.

I knew Frank Morrison and Abram Sochat and Charles Ross. They worked in the same room, right close to me. I was friendly with them and used to go out with them once in a while after work, and sometimes at the noon hour we would stop and talk together.

I was in the Plant factory at the time of the dissatisfaction, in May or June, 1910. I was on a committee to see Mr. Plant. Mr. Frank Morrison, Mr. Murphy, Mr. Harrison, and I were on the committee, two puller overs and two side lasters. We told Mr. Plant that the new machines kept us back in our work and we didn't do as much as we did before. Afterwards he fixed us up.

Previous to our going to Mr. Plant the operators of the toe-lasting machines had had a committee to see Mr. Plant and their wages had been raised, so we were appointed from the other lasters to see Mr. Plant and get a raise of prices also. There was

no strike and no union was formed, to my knowledge, and nobody tried to form a union, so far as I know.

I believe satisfaction was given to us immediately after we saw Mr. Plant. I went to his office with the others to talk with him.

I have no knowledge of Morrison or Sochat or Ross spending any money among the men to entertain them or to take them out or to give them dinners. If there was such a thing, I wasn't in it. No money was given to me.

Cross-examination:

At the time we applied for the increase in prices we did not threaten to strike if we did not get the increase in prices. I believe this matter with respect to the increase in prices was in June, 1910.

913 JANUARY 7, 1914.

ARTHUR F. CROUCH, witness for defendants.

I live in Medford and am a side laster in the Thomas G. Plant factory. I have been there nearly fourteen years and was one of the men who won prizes for good work there. I was there in June, 1910, and was pulling at that time. I know Epstein, Johnson, Frank Morrison, Ross, and Sochat. I worked in the same room with them.

I know there was trouble in May or June, 1910, because the work did not come fast enough through the toe lasters. A raise had been given for the toe-lasting work and the other men wanted it, too. A committee called at the office. I was named on the committee, but through some accident I was not there and did not go in with the committee.

I did not know of any agitation or any effort to form a union. I never heard of any money being spent among the men by Morrison or Sochat or Ross and I did not see any signs of it, and, so far as I know, they did not take the men out or entertain them or give them dinners or take them to meetings.

The trouble may have lasted two or three days. It did not last a week. The toe lasters, who ran the machines, first asked for a raise and after they got it the side lasters asked for a raise and the whole trouble did not cover over a week. There was no strike, but there was some talk of a strike if we did not get any satisfaction.

Cross-examination:

I think Morrison left the Plant factory immediately after the dissatisfaction that there was. There was talk about a strike if they didn't get the increase in wages. If this Ross is Charlie Gordon, I know him, but I don't know him as Ross. I do not

know when Sochat left the factory. I don't know whether he remained there through the year 1910.

914 JANUARY 7, 1914.

CHARLES FRANCIS CONNOR, witness for defendants.

I live in South Boston and I now work for Fred T. Ley, corporation, who are contractors. In 1910 I was working for the Thomas G. Plant Company as a toe laster. I had been there nearly two years.

I know Frank Morrison fairly well and I know Charles Ross and Abram Sochat by sight. They were working in the same room with me in the Plant factory.

I was one of the committee of toe lasters who presented their demands. We saw Mr. McGaffee, who represented Mr. Plant. I knew that the side lasters went to see Mr. Plant after the raise had been granted to the toe lasters. I was working in the lasting room right along, seeing the men there every day and talking with them when I was out at noon. As to whether I was around with them at all after working hours—well, maybe waiting outside for a car. There used to be a store across the street where we used to stay a little while after work. I did not hear any talk about forming any union among the men in the lasting room or about Morrison or Ross or Sochat spending money among the men to promote a union or entertaining them, taking them out to dinners or lunches or meetings in the evening. I never heard of anything of that kind and I never heard of a book or paper on which 300 men had written their names, agreeing to form a union.

Cross-examination:

I left the Plant factory in June, 1913. No one asked me at any time during the year 1910 to become a member of any union in the Plant factory. At the time we were trying to get the increase in wages there was no talk of any strike if we didn't get it. I would have heard if there had been because I was on the committee.

915 JANUARY 7, 1914.

SAMUEL PEARLMAN, witness for defendants.

I live in the Roxbury district, Boston, and am now running a livery stable in Roxbury. I have been running the stable about five months and it is my own enterprise.

I was a shoemaker for over twelve years. I worked at the Thomas G. Plant factory as a toe laster. I know Frank Morrison, Charlie Ross, and Abram Sochat. I was one of the committee of toe lasters that went up to try to get a raise. Our reason for wanting a raise was that the work was very hard on the new ma-

chines and we couldn't do the amount of work we used to do on the old machines. I felt that we ought to get a little more money for the work. We were paid by the piece. Mr. Plant satisfied the toe lasters. I understood that after that the side lasters went up to try to get a raise. I continued to work at the Plant factory until about eight months ago.

At the time that the men made these demands of Mr. Plant I never heard any talk made by Morrison or anybody else about forming a union of the men in the lasting room. So far as I know Morrison or Sochat or Ross did not spend any money among the men and I never heard of their entertaining them or taking them out in the evening. I would have been likely to know of it if such things had been going on. I was one of those that was well known.

Cross-examination:

I was friendly with Morrison, Ross, and Sochat. The committee of toe lasters was appointed by Mr. Slosberg, our superintendent, on the floor where we were working, and he sent us up to see Mr. McGaffee at his office. So far as I know, we did not intend to strike if we did not get the increase in wages, and nothing was said about a strike or about discontinuing work if we did not get it.

916 JANUARY 7, 1914.

JOSEPH BEAUDREAU, witness for defendants.

I live in the Roxbory district in Boston, and I am a toe laster in the Thomas G. Plant factory. I have worked there nearly six years, doing toe lasting all the time.

I know Frank Morrison and Charles Ross, but I do not know Abram Sochat. I think Mr. Ross went under the name of Gordon at that time. I was working in the lasting room in May or June, 1910, running a toe lasting machine. I was a member of the committee who presenting the claims of the toe lasters to Mr. McGaffee. The work on the new machines was hard and there were lots of high toes which made it harder, so the boys got together and thought they wanted a little more money. Four of us were appointed and we had a talk with Mr. Slosberg and Mr. McGaffee and finally they told us that our wages had been raised. I did not hear afterwards of any attempt by the side lasters to get a raise.

Q. Well, to your knowledge was there any attempt to form a union in the lasting room at that time?

A. Not during all the time I was there.

Q. Or did Morrison have anything to do with starting this agitation to go and see Mr. Plant?

A. Never heard of it.

I don't know anything about Morrison and Ross and Sochat spending money among the men and taking them out and giving them good times and getting them things to eat and entertaining them in order to get a union started. If there had been anything of that sort I think I would have got some of it, because I am pretty well known around there, and I know what is going on among the boys. I didn't get a penny and did not know of any such thing going on or their spending any money.

Cross-examination:

I do not recall when Morrison or Ross left the Plant factory.

I do not know Mr. Sochat.

917 JANUARY 7, 1914.

CHARLES WEIDMAN, witness for defendants.

I live in the Roxbury district, Boston, and I have worked for six years in the Thomas G. Plant factory as a toe laster. I know Frank Morrison and I know Charles Ross, but I understood his name was Gordon at that time. I know Abram Sochat. I worked in the same room with them. I was not on the committee that went to Mr. McGaffee. He arranged for us to get more money.

I was with the boys all the time at noon time and used to meet them quite a lot. I did not know anything about Frank Morrison trying to start a union. I knew he got dissatisfied and got around somewhere. I heard some talk about it, but I never heard anything positive about what he was doing. Nothing was ever said to me about it. I know nothing about his spending money among the men in taking them out and giving them good times.

Q. Were you among the men, so that you would have known about it if it had been going on?

A. I feel as if I should have got mine out of it if there was anything coming.

Q. Were you with the men enough so that you would know that that sort of thing was going on or not?

A. Yes, sir; I feel I was among them enough when I was asked to be one of the committee to represent the toe lasters.

Q. And you never knew there was any such thing going on?

A. I never knew there was any money given.

Cross-examination:

I never heard of any talk of a union. I heard the boys talk of being dissatisfied. We got the increase in wages practically the same day that the trouble started. We were satisfied that day and there was no further talk about it.

Morrison left the Plant factory several days after the side lasters and pullers over got their increase. Ross left about the same time and I think Sochat also.

918 JANUARY 7, 1914.

HARRY JOHNSON, witness for defendants.

I live in Lynn and am a roadman for the United Company in Lynn. I repair machines, set up machines, and instruct operators. I have been with the company at Lynn in that capacity over sixteen years. I work under Mr. Richards. He is now ill with pneumonia and has been ill for about four weeks. I wanted to see him last night, but I was not allowed to see him.

I know Frank Morrison, but I do not know Alexander Ross or Abram Sochat and never saw them. I did not tell Morrison to go to Charles H. Willson about June, 1910, and talk with him about starting a strike in the Plant factory.

Cross-examination:

I have known Morrison about 14 years. I first saw him in one of the Armenian halls in Boston. I am one of his countrymen. I saw him once in a while after that, but never had any talk with him.

I saw him early in August, I think, in 1910. He came down and talked to me about this matter and said he wanted to have a little money. I said: "I don't want to mix in that business at all. You had better take my name away from it."

919 Q. Did you ask him why he wanted the money—for what purpose?

A. He told me he was working for the United Company—to have a strike out there.

Q. What was your reply?

A. I told him the best thing he can do is to keep away from me—I don't want to put myself in trouble.

Q. Did he say anything about that matter, about having had a previous conversation with you about the same matter?

A. No, sir.

Q. Had you ever had a previous conversation with him about that matter?

A. No, sir. I used to get away all the time, the best way I could.

Q. Answer the question, please. Did you have a previous conversation with him about his employment with the United Shoe prior to the time when he came there and asked you for the money?

A. He didn't ask me for the money. He wants me to go and talk to the United Shoe to give him money.

I did not talk with any representative of the United Company about this conversation with Morrison, so far as I know. About the second or third time when he came down to the office, at the door, and he caught me again, I said: "The best thing you can do is to let me alone. I don't want to get mixed in that business." And I was afraid of my job. That is the whole size of it. I didn't want to get mixed in business like that. I was afraid of my job because I know as soon as I got mixed up in business like that there would be some kicking, the same as there is now, coming into court and talk about it. I didn't want to get into that business at all.

During the period from the summer of 1910 until last year he came to see me about ten times. I told Mr. Richards: "There is a case like this going on now, and I want to tell you now so I won't be blamed." I did not tell any other representative of the United Company. During all that period from the summer of 1910 until last year Morrison came down there and wanted me to use my influence with the United Company to have him paid money. He told me he had been employed by the United Company to strike over at Plant's.

920

Direct examination resumed:

On each of these occasions, when he has been to see me, he has tried to get money.

921

JANUARY 7, 1914.

HARRY W. SMITH, witness for defendants.

I live at Worcester and am an inventor and sportsman. I have been a manufacturer. I have invented automatic weaving machines for the Crompton & Knowles and Draper Companies, and those machines are in use in the Amoskeag, the York & Everett, and the leading gingham mills in the country.

I have been engaged in manufacturing fancy cotton, and at one time was proprietor of the Wachusett mills in Worcester. I thought of and brought about the consolidation of the Reed-Prentiss Company in Worcester; I sold the Queen Dyeing Company, of Providence, to the United States Finishing Company, and I arranged the consolidation of the Crompton & Knowles and the Crompton & Thayer Company at Worcester.

I have known Thomas G. Plant for eight or ten years, socially at first, and in a business way for the last three or four years. I first came in contact with him at the Brookline Country Club and horse show. He was a lover of horses and exhibited there and in many other places. I got to know him very well. I was judging at all the principal shows where he was exhibiting. He visited at my house.

In 1910 Mr. Plant was living at the Somerset Hotel in Boston. Our first talk about his shoe machinery inventions was at the Brockton show in 1909 or 1910. I knew through my patent attorney, Mr. Hains, who took out my gingham patents, that Mr. Plant was working out a line of shoe machinery patents, and in the course of our conversation I said: "Plant, I know what you are working at. Now, when you get ready let me know. I will put it over for you," and he said: "I have got my own plan, Mr. Smith."

I visited him at his factory the next summer, believe it was in July. He did not at that time speak to me about any negotiations he had had with anybody representing the United Company. All that he said about his machinery was that it was the best that could be made, and that he had his own plans for handling it.

922 Prior to that time I had endeavored to interest him in sports that I cared about, and had talked with him and with his wife at the shows. I knew that he had these valuable patents and also knew that he controlled the shoe factory. I wrote him from Leesburg, Virginia, and put the whole matter before him, and told him to get out of business and enjoy life.

He replied that he was interested to see me on his patents. Then I went up to his factory and saw him. He did not show me the machinery, but told me how successful it was and what it was going to be when it was done.

During the summer of 1910, I think on July 21, he telephoned me at my house in Grafton from Hotel Belmont in New York. He said to me over the telephone: "Is that you, Smith?" I said: "Yes." He said: "This is Tom Plant. I am at Hotel Belmont. Do you want to make some money?" I said: "Naturally." He said: "When can you be here?" I said: "Half past six to-morrow morning." He said: "Come on."

I went and over and found him at the Belmont early in the morning and talked with him from seven o'clock until nine fifteen. He told me the position he was in. He said he had had the western manufacturers on for two days, that they wanted to get the control of his patents, and that he did not propose to give up the control; that he wanted to play the game as he had figured to play it. He said: "I can do nothing on the eastern end. I have broken with Winslow, and Endicott has gone back on me." And he said: "Now, if you can get Barbour to send for me, as you told me you could, then I can get an opening with Barbour, and if you can get Herrick, so Herrick will come to my side of the case, I believe something can be done, because those two men dominate the situation."

He told me that he had been negotiating with Mr. Winslow, that Mr. Endicott had arranged meetings for him with Mr. Winslow, and that he had put up a proposition of a million dollars to look at his patents and that if they looked satisfactory they were to pay five millions more—six millions in all—at the end of three weeks. He told me of a meeting at the Algonquin Club at which they had voted not to put up a million dollars, and he said Mr. Herrick and Mr. Barbour were the strongest
923 against him. He did not know either Mr. Barbour or Mr. Herrick. I think Mr. Barbour was the president of the Linen Thread Company, of New York, and vice president and the largest stockholder of the United Company. I had met Mr. Barbour twice and I knew his son.

Before this meeting in New York I had argued with Mr. Plant each time I had met him about the necessity of matching up his patents with the United Company patents, so that the trade could get their value. I told him that if he matched his patents with theirs, they could go on and make better shoes and be more successful than they could be fighting. I argued that from start to finish.

I told Mr. Plant that Mr. Barbour was the big man at the New York end, and I thought he would look at things different from Mr. Winslow, whom Plant had been fighting with. As a result of the meeting with Mr. Plant at the Belmont, I made an appointment for him with Mr. Barbour. Mr. Plant and I went down to Mr. Barbour's office on that day, and we were there from 1.15 until 7.30 that night.

Q. What was Plant talking about at that time?

A. The value of his patents—the great gain that it would be to the Shoe Machinery to have his factory here, because it would be shown as a model factory to all the different companies of the world; that he had methods there that no one else knew about, and economical methods.

Q. Did you learn at any time during those conversations whether the idea of including his factory was a new suggestion or an old one?

A. That was a new suggestion that morning to me at the Hotel Belmont, when I insisted that if he still stood for the million I would not start at all, and he said he would withdraw the million.

Q. You mean demanding a million before they looked at the patents?

A. Before they could look; yes. I said I would not start at all.

The next morning we went to Mr. Barbour's office again, and Mr. Barbour decided to come to Boston and get the directors of the United Company together to see if they would reconsider their idea of Mr. Plant's patents.

I brought Mr. Plant in contact with Mr. Herrick at the Hote Touraine, and on his behalf I saw or communicated with
924 Mr. Winslow. Mr. Plant met me several times, and wrote me about the progress he was making; and finally, for accomplishing what he wanted me to do, he paid me five per cent on the six million—$300,000.

Cross-examination:

I first spoke to Mr. Plant about getting rid of his shoe machinery. The reason which I gave him was that his patents matched up with the United Company patents would give a greater value than if they were fighting. I had not examined Mr. Plant's patents, but I knew about them through Mr. Hains. I did not at any time examine his patents. Plant had six hundred odd patents covering the art from start to finish, and of course the United Company had basic patents, some of which had run out and some of which were still in force, and if Plant started to manufacture his machines there would naturally be a fight if the patents interlocked. When I first spoke to Mr. Plant about selling out he had not then discontinued the use of the United Company's machines, and there was no fight at that time.

When I advised Mr. Plant to let me know if he wanted to sell out and I would put it over, I meant that I would find the value of his patents and see the United Company and see what could be done. My reason for not seeing some other concern was because the United Company were the only people in that line that amounted to anything. Prior to the time that I advised Mr. Plant to sell out his machinery I did not have any conversation with any representative of the United Company.

Mr. Plant's reply to me when I first spoke to him about selling out his machinery was that he had his own plan. That was his reply for two years and a half. He did not tell me what those plans were until later.

The substance of the letter which I wrote him from Leesburg, Virginia, was repeating my advice that he should sell out, and saying that I would like to see him about his patents, and go into the matter carefully with him, and that he knew what I meant.

925 Between the time that I first spoke to Mr. Plant at the Brockton fair and the time of his telephoning from New York, I think I saw him four times about this matter, and

each time I advised him to sell out. Before the meeting in New York on July 21 he had taken out all the United Company machinery and had installed his own machinery.

When I saw Mr. Plant at his factory before he sent for me to go to New York, he said that he could not get a reduction in the royalties such as he ought to have for the tremendous amount of machines that he was running, and he proposed to show the United Company how to do business. He told me that he had a Wonder Worker Company, and that he intended to get out a line of shoe machinery and put it upon the market. He said that he was working to that end, and that he had tried to interest Mr. Endicott and Mr. Jones.

At the meeting in New York he told me that the western manufacturers had been in the East looking at his machines, and that he had been asked to make some arrangement with him to take an interest in his machines. He said that he would not allow them to have the amount of stock in his company that they wanted.

When Mr. Plant and I went to see Mr. Barbour in New York Mr. Barbour said that in his judgment the United Company ought to have Plant's machines. That was on July 21, and we met again in Mr. Barbour's office in New York the next morning, July 22.

I next met Mr. Barbour in Boston the following Monday evening and found that he had arranged a meeting of the directors of the United Company to see if they would reopen negotiations with Mr. Plant. That was in July, 1910. I did not have any further conversation with Mr. Barbour.

I had a conversation with Mr. Winslow about this matter at his office. I think it was on the sixth or eighth of 926 August. The substance of the conversation was: Mr. Winslow said that he was there to buy patents, whether they were five dollars or five millions; that if Plant's had value he would look at them for his company, but he wouldn't ever buy them till he looked at them.

I did not then arrange that Mr. Winslow could examine the machines in Mr. Plant's factory. My first conversation with Mr. Herrick was on the day I went to New York, July 20 or 21. That was at his office in Boston. In substance Mr. Herrick said that Mr. Plant was impossible; that they wanted to know what he had before they made a step, and Plant wouldn't show them.

927 JANUARY 7, 1914.

WILLIAM J. McGAFFEE, witness for defendants.

I am vice president and a director of the Thomas G. Plant Company, and general manager of the factory. I have been connected with Mr. Plant or the Plant Company in the manufacture of shoes for 23 years. For 17 years I have had charge of all the manufacturing part of the business, including the producing of the product and the looking after the machine end of the business. I have continued in charge as general manager and vice president since Mr. Plant sold out. I have entire control of the manufacturing end of the business. Nobody else interferes with it in any way. The other directors have other lines to take care of.

Since Mr. Plant, in September, 1910, sold 60 per cent of the stock in the Plant Company to the United Company, the United Company has not in the slightest way interfered with my management of the business, or in any way attempted to exercise any influence or control over my judgment in the management of the business. I remained vice president. Mr. Ratcliffe is president.

In September, 1910, we had in the Plant factory the machines called the Wonder Workers, which were the machines that Mr. Plant had built. We were making women's shoes at that time, and did not make any men's shoes.

We had all kinds of troubles with the Wonder Worker machinery. The parts were built in about every city where there was a machine shop, because Plant did not have any factory big enough to build his own parts, and when those parts were assembled together they did not fit. If one part was strong, another was weak, and when that part broke it would be apt to break four or five other parts that might otherwise be strong enough to stand up. We had a great deal of trouble and great deal of expense on account of breakage of the machines. There

928 was a force of machinists taking care of the machinery all the time, trying to keep the output up; there was so much breakage it bothered me in getting out the shoes.

All the machines caused trouble by breakage about the same way. Probably the stitching machine was the one that caused the greatest trouble. I also had a great deal of trouble with breakage on the welting machine.

We broke a great many lasts on the Wonder Worker machines. Comparing six months of our use of those machines with six months of the use of the United Company machines after we removed the Plant machines, I broke 210 pairs of lasts a week more on the Wonder Worker than on the United machines. I broke

25 pairs of lasts a week on the United machines, but I think it is safe for me to say that there were 20 pairs of those that had been cracked or started to break on the Wonder Worker machines. I made this comparison after I had removed the Wonder Worker machines and had put in the United machines. Lasts cost from $1 to $1.10 per pair.

Prior to 1910 the Plant factory had been run with the United Company machines, although we probably had five different makes of machines there besides the United. We took out the United machines and put in the Wonder Workers in 1910, and used those machines until in December, 1912, we started to change back again to the United Company machines.

I changed back again because I wanted to see if I could get a line of machinery that would stand up and manufacture shoes, without manufacturing machines all the time. I was absolutely satisfied that the Wonder Workers wouldn't stand up. It was my judgment that determined the policy of the company with respect to the changing over from the Wonder Workers. Mr. McLeod was associated with me as practical man in dealing with that problem. He agreed with me.

The trouble that was developing with the Wonder Workers which led me to this conclusion was their continual breaking down. I was not able to get out the work in the factory, because the longer they ran the weaker they got. I was giving them just the same work that they had been given first; I 929 was still making women's shoes, just the same.

As to what those machines would have done, or how they would have stood up, had they been put to the test of making men's shoes,—oh, they were altogether too light. I don't think you could have manufactured men's shoes on that line of machinery that Mr. Plant had got out and do it anywhere near satisfactory at all.

The Wonder Worker machines belonged to the Plant Company; they had been sold outright by Mr. Plant to the Thomas G. Plant Company in 1910.

In December, 1912, I put in one line of United Company machines and tried them out for speed and quality; that is, a welter, sole layer, stitcher and all the machines for one line of shoes.

I put those machines in for the simple reason that I couldn't make the shoes with the Wonder Worker, and after trying one line of those machines I then put in another line, ~~and then I put in another line,~~ and then I put in twelve or fourteen lines afterwards.

My action in putting in the United Company machines was governed absolutely by my own wishes and my own independent judgment. I did it because I felt that it was for the interests of the business of the Thomas G. Plant Company, of which I am a stockholder. The United Company never approached me in any way.

After I put in this line of United machines for making welt shoes I watched their work and followed it very close and compared it with the work of the Wonder Workers. I observed that the machines would stand up and my expenses would be so much less in making shoes with them, compared with the Wonder Worker machines, that I felt that it was of great interest to us; and in addition my operators could do a good deal more work on the United machines than they could on the Wonder Workers, on account of the breaking down of the Wonder Workers.

930 As far as the quality of the work goes it could not help but be better; what good points the Wonder Worker machines had the United Company put into their machines, and they had the advantage of them. We had the useful ideas from Mr. Plant's machines combined with the greater efficiency of the United machines.

For example, the Wonder Worker welting machine was a very speedy machine, but it had no control of the seam going around the toe same as the United machine has with its governor, like the governor on an engine. You can welt a shoe on that machine and get just as good a seam around the toe as you can down the side, because the governor regulates the tension.

The sole laying machine had a motion that would throw the sole, while the United machine is direct pressure, and I got better sole laying on the United machine.

As far as the stitching machine goes, why, Mr. Plant was never able to put the Baltimore attachment on his machine because the United had it covered in their patents. That was a great hindrance to the quality made on that machine, because if I wanted to stitch close on the inside or around the toe, I would have to also do the same on the outside, where I would like to throw my extension, and I had a great deal of trouble with that, so much so that I had to do it from a dinked sole, and in doing it from a dinked sole, or an inner and outer, the inner would stretch, and when it stretched I only had as much sole to cover that inseam as I would have had if it hadn't stretched, and the out-sole wouldn't cover it. The result was, in stitching on the rapid stitcher I would not get the seam on my welter, and then my shoes would rip.

I had 30 repairers at one time repairing shoes after the Wonder Worker machines, and that was on 10,000 pairs of shoes a day. I never figure over five repairers on the United machines, as against thirty with the others.

The new line of United machines, which we put in since December, 1912, embodied the improvements which Mr. Plant had made in the Wonder Worker machines and also such improvements as the United Company had made over their old line. The United Company's machines are much stronger and are better machines all the way through than their old line. I believe I can get a great deal better work and more work out of them than I could out of the old line that I discarded in 1910. There is more speed in them. As to whether I get it done cheaper, you might put it this way, of course the price of labor is so much now that you would pay the money for it anyhow, but I think an operator can do more shoes a day. So far as the work of the machines is concerned, it is a great deal less expensive than it used to be.

931 Our saving on the new machines over the Wonder Workers is three and a quarter cents a pair. That includes the different methods the United has got of making shoes over the Wonder Worker method. Mr. Plant had in some respects a method of making shoes absolutely peculiar to himself. This consisted in dinking out or cutting out the sole to the shape of the last before it was put on the shoe, while the United Company method is to attach a blocked sole to the upper, and then to shape it on the rounding and channeling machines. Mr. Plant's method required more hand work and was more expensive. Mr. Plant had not developed any efficient rough rounder.

Including that change, together with the improvements and greater efficiency of the machines, I could make a pair of shoes for three and a quarter cents less than I could with the Wonder Worker. Aside from this change in method, other economies result from the fact that in the same space I can make a thousand more pairs of shoes. That is because the method is quicker, because I do not have so much hand work to do with this new method of the United as I did on the Wonder Workers, and shoes don't have to wait; they keep traveling more regularly. Our rental there is twenty-five cents a foot, and when you have gained the room for a thousand pairs a day more that means something to you. That is a great saving of space.

My comparison as to breakage of lasts was between the Plant machines during the last six months that we ran them and the United Company machines equipped with the Plant improvements during the first six months that we ran those, and the

breakage was 235 pairs of lasts a week on the Wonder Worker machines and 25 pairs a week on the United machines. The Wonder Worker machines which were doing most of the breakage were the sole layer, the leveling machine, and the heel-nailing machine. We also got a good deal of breakage of lasts on the toe and heel laster, which broke the last across the waist. Comparing the breakage of lasts on the Wonder Worker machines with that on the United Company machines that we had before we changed from the United to the Wonder Worker, the number of pairs broken with the United machines would be so small that we would hardly take any notice of it. I would wonder if I got 10 pairs a week; 10 pairs a week would be an awful lot of lasts to break on the United machines. A welt last costs from $1 to $1.10 a pair. As to whether they are done for if they break, it is pretty hard to fix them. If they crack anywhere you might put a little bolt through and fix them, but usually they would break because the pressure came so hard on them.

932 The reason we changed in 1910 from the old line of United Company's machines to the Wonder Workers was because Mr. Plant owned the Wonder Worker machines and he owned the shoe business, and we had to come pretty near doing as he wanted. He wanted them shifted, and we had to shift. We had but very little to say about it.

Comparing the wages that can be earned by operators on the United Company's improved line of machines and the wages which could be earned by operators on the Wonder Worker machines, they can make more money on the United Company machines. The greatest difference would be on the rapid stitcher, because that was the weakest machine we had. The operator could make a great deal more money on the United stitcher than he could on the Wonder Worker, and it was the same on the welter, because the machine will stand up. The Wonder Worker welter was speedy enough, but would not stand up so that a man could do a day's work. The operators of the United machines can also make more money on the United sole-laying machine and heel-nailing machine than they can on the Wonder Worker machines.

Cross-examination:

I have been with the Thomas G. Plant Company for 23 years. I do not know how much longer they have been in business. From the time the United Company was formed in 1899 up to the time we installed the Wonder Worker machinery we might have had in the bottoming room a few machines from five or six

other companies, but we used mostly the United Company machines.

I do not know of any reason why the change was made from United Company machines to Wonder Worker machines other than that Mr. Plant desired to change.

Taking the first year we installed the Wonder Worker machinery and comparing the profits of that year with the profits of the preceding year, when we used the United Company's machines, it was a great deal less. I should say one-half less. That was not due to the purchase of the Plant machines; it was due to the great amount of bother and trouble we had with the Wonder Worker machines.

933 The Plant Company paid in the neighborhood of $400,000 for the Plant machines. It might be a little more than that, but that is as near as I can remember it. As to whether we declared a dividend covering the first year that we had the Wonder Worker machinery installed, we did, as we always did, declare a certain per cent dividend, and whatever the earnings on the common were we left in the business. That was the custom of the business. The company actually paid the money to Plant for the machines. This was paid at the time of the purchase. We did not have a surplus that took care of that.

Some of the Plant machines were more rapid than the old United Company machines if they would stand up and do the work; but they would not stand up. A man would not do as many pairs of shoes on them in a week. So long as they were running some of them would do more work—the welter, for instance; the stitcher would not.

The machines as a whole were too light. The machines could be made heavier if they got out new jigs for them. I should say the breaking of the machines was the only difficulty with them.

We started to remove the Wonder Worker machines and to put in the United in December, 1912. Some of the Wonder Workers are stored in the factory, and some in a storage building.

The cost of making the shoes during the first year after we installed the United machines in 1912 was a great deal less than the cost of manufacturing the shoes during the previous year on our own machinery. The United method of manufacturing shoes is so different from the Wonder Worker that you do not have to carry the same floor expense, and there is not so much repairing to be done. In the rough rounding system it used to

cost me $39 a week to take care of my extra help under the Wonder Worker system, and it is down to $7 a week now under the United system. The Wonder Worker would do the work so poorly that I would have to have somebody fixing the work up by hand before it could go to the next department. That is in one department, but I think it is a fair estimate of the rest of them. We have about 14 departments from the time the shoe is lasted.

We will have to pay the United Company the royalty
934 of four cents or four and one-quarter, whatever it may be.

We have not yet paid them any royalty, because the matter of changing the Wonder Worker machines for the United machines has not been fixed up. We figure our royalty into our shoes when we sell the shoes.

When I took out the Wonder Worker machines and put in the United machines I did not make any arrangement with the United Company with respect to royalties. I just simply put the United machines in, ordered them as I could take them and not interfere with the output of the factory. I know we have got to pay royalty, but I have not got the change all made. There was no understanding that we should not pay royalties until we had installed all the United machines. The reason we haven't paid royalties on the United machines now in the factory is simply because we haven't paid it. The reason for that is that the Thomas G. Plant Company business is to be turned over to the directors. There are nine directors, besides four directors representing the United Company. I don't remember the names of the representatives of the United Company. When we have a directors' meeting we call up the United Company headquarters, and they send out four people to represent them. I think the name of one is McLeod. I can't name the other three. Our secretary calls them up.

When I decided to change from the Wonder Worker machines to the United machines I went down to see Mr. Ed. Brown and told him I would like to try out one line of his machines. He said: "All right." That was the welt line, complete, for making a welt shoe.

If the Wonder Worker welter and stitcher would stand up they would do more work in a day than the old machines of the United Company that we had before. I think if we did twenty-five pair it would be a pretty good average.

On the new United welter with the Wonder Worker attachments we do 50 pairs of shoes a day more than we would do on the old Wonder Worker machine.

935 Mr. Plant never used the Baltimore edge attachment on the stitcher because the United Company had a patent on that. I do not know what patent or patents there were on that machine, but I know Mr. Plant told me he could not use the Baltimore edge attachment on account of its being one of the United patents. That is all I know about it. I never went into the patent end.

On the old United machines my breakage of lasts was about 10 pairs a week, and on the Wonder Worker machines about 235 pairs a week for six months. On the new United machines the breakage was 25 pairs per week for six months. I think the reason why the breakage is heavier on the new United machines than on the old United machines is because there are so many lasts that started to break on the Wonder Worker machines and I am feeling the effects of it now.

As to why the Wonder Worker machines broke so many lasts it was on account of the levelling machines, the springs being so heavy on them that when the form would come to the sole the pressure was so great that it broke the last. I might say the same of my heel nailing machine. Lasts were also broken on the toe and heel lasting machine and on the sole laying machine.

Some of the parts of the Wonder Worker machines were made in Worcester and some in Providence. I do not know by whom. I did not follow that part of it. I can not give the names of any concerns that manufactured Wonder Worker machines or parts of them.

I can not make any estimate of the amount of royalties that we now owe the United Company on the new machines. There was no arrangement made with them at the time nor any understanding that we should not pay royalties for a period. I did not take up the matter with the United Company to find out whether we should pay royalties when they fell due. Mr. Ratcliffe, our president, might have. He and Mr. Mitchell, our secretary, took care of that part of it. I did not have anything to do with it.

936 In comparing the expense of operating the old Wonder Worker machines and the new United machines I did not take into consideration the amount of royalties in the three and one-quarter cents saving per pair that I estimated; neither did I take any account of the investment in or the upkeep of the Wonder Worker machines. I took into consideration the floor space.

When I said three and a quarter cents a pair I said that was the difference in the method of manufacturing welt shoes with the old Wonder Worker and the United method.

The United have a rough-rounding system that Mr. Plant couldn't install in his place, because he told me he didn't have any rough-rounding machine to do it, and so we had to use a died sole and there was three and a quarter cents difference.

I have not taken into consideration at all the amount of royalty we would have paid on United Company machines. Our average capacity is 12,000 pairs a day. It was about 12,000 pairs this year. We manufacture women's shoes altogether.

Direct examination resumed:

I have machines from eight different companies besides the United machines and the Wonder Worker machines that I am still using. I have machines of the Parsons Machine Company which I use for dieing out soles. I have machines of the Boston Machine Works and the Tubular Rivet & Stud Company. I have the Knight perforating machines, the W. J. Young Company's skiving machines, and a machine of the Fortuna Skiving Machine Company. I also use the North American Chemical Company's machines and the Puritan fair-stitch machines.

Cross-examination resumed:

I have had some of those machines from other companies for quite a while. Most of them I have bought within two years, some within a year. I have bought the Parsons machines and the Boston Machine Works machines within a year. The Parsons machines are dinking machines and the Boston machines are folding machines which fold the vamp so that you won't
937 have a rough edge on the vamp. I have those machines because I find they are better than the United. I do not have any lasting, welt sewing, outsole stitching, heeling, or metallic fastening machines except the United. I have two of the United Company's eyeletting machines and also have my old line of eyeletting machines that I had previously. I have forgotten whose machines they are but I have run them for years.

Direct examination resumed:

Mr. Winslow has agreed to sell the Thomas G. Plant Company business to five of us that have been associated with Mr. Plant from 16 to 23 years, as soon as we can prove to Mr. Winslow that we are capable of running the business without the assistance of the Thomas G. Plant Company. Those five directors have not any connection at all with the United Company.

Cross-examination resumed:

All of the Plant machines that I am not using are stored. I am using now about 480 Plant machines and about 450 United machines.

JANUARY 7, 1914.

GEORGE T. MCLEOD, witness for defendants.

I am a "practical man"—shoemaker—at the Plant factory. My duties are to see that the shoe is made correctly, and that requires me to keep in close touch with the machinery all the time. I have been with the Plant Company about 22 years, and I am a stockholder and a director of the company. I have been a director for about three years.

I share the responsibility for the selection of machinery. When a machine is needed I look it over, and sometimes I go to see the machine running in other factories, and I decide whether it is better than the one we have.

938 In connection with the change from a Wonder Worker machine to a United machine I have had to decide which would be the best for our business, after seeing both machines run. I decided on the best machine. When we have changed a machine I decided that the new machine was better for the business than the machine that we were running at the time. The changes from Plant machines to United machines were made with my approval. The policy of making the change was settled by Mr. McGaffee and myself and the rest of the directors if they were called in.

My reasons for changing from Plant machines to United machines were that I found that the United machines were, in general, easier to run, more quiet, and do not tire an operator so much, so that the operator can do better work and feel fresher at night. The United machines are also put together better mechanically and the parts fit better. If a part does break the new part fits better, and the operator running the machine does not have to wait so long for his machine; and he can turn out a bigger day's work with the United machine than he could with the Wonder Worker machine.

As to the difficulties we had about breaking down on the Wonder Worker machines, the Wonder Worker machinery was installed very quickly in the factory. It was, I might say, all installed in a lump. In starting the Wonder Worker machines we found that a great many of the parts did not go together; that is, one piece would not fit in with the other pieces. There would be a cam or some other part that would not fit and would have to be taken to a mchine shop and fitted, or would have to be fitted by the machinist in charge of the machines, so that the operator would be delayed sometimes from half a day to a whole day. We had to have more machines to do our work than we would have if the machines ran regularly.

This trouble with breakage and difficulty in making prompt repairs was more on the start than when we finished with the Wonder Worker machines, because we strengthened the machines in some places. But it was a great deal more than we have on the United machines now. We had to have
939 probably three or four times as many machinists watching the Wonder Worker machines and tending them all the time; yes, more than that.

Among the United machines which I thought were better than the Wonder Workers were the Goodyear innersole channeler, the Goodyear lip turner, the lasting machines, the welter, the welt beater the sole layer, the rapid stitcher, the heal nailing machine.

I am familiar with the improvements which Mr. Plant had embodied in the Wonder Worker machines, and illustrations of those improvements which had been embodied in the new United machines which we put into our factory are the right and left wipers in the bed lasters; in the welt machine the mechanism for holding the welt and cutting off the welt, thereby relieving the operator from holding a knife in his hand all the time; and the stop motion on the Goodyear stitcher. Those strike me as important.

I heard Mr. McGaffee's testimony about the reasons why the changes from Wonder Worker to United machines were made, and about the benefits that have accrued from the changes. Those changes were made with my approval and in the exercise of my best business judgment, and I am in accord with Mr. McGaffee in what he said about the results of the changes in economies and advantages. I have been all over that with him and we decided it months ago.

In reaching my decisions about changing these machines I have not had anything to do with the United Company or any of its officers. I do not come in contact with them very often. I never met Mr. Winslow but once. I am acquainted with some of the officers, but I never had any suggestion made to me that it would be to my advantage to change machines. The
940 United Company has not brought any pressure or influence to bear upon me at all. I would not take it if they did. These changes were made in the exercise of my honest and independent judgment.

Cross-examination:

I am a stockholder and a director of the Plant Company. I attend the directors' meetings, and as the representatives of the United Company came in to the directors' meeting I have been introduced to them, but do not know the names of any of them. I remember that two years ago Mr. Bradbury was one of them.

We are still using in the Plant factory about 480 Wonder Worker machines. These machines are mostly on McKay shoes. We make both McKays and welts. We have left a few bed lasters on the McKay work, one or two rapid stitchers, and our nailing machines. We have Wonder Worker machines in our finishing room on both McKays and welts.

We have one or two lip turning machines in the stock room in the manufacture of welt shoes. We have no Wonder Worker machines on welt work in the lasting room, in the welt sewing or outsole stitching room, or in the heeling room. The only Wonder Worker metallic fastening machine that we are using on welt work is a machine that puts three nails into the heel.

As to repairs for the Wonder Worker machines, we repaired a great many in our own machine shop. We had quite a stock of parts on hand that were left with the machines, and we got some from the United Company.

At the time we first installed the Wonder Worker machines there was not a large number of parts. I do not know exactly how many there were. As to whether we made new parts from time to time as we needed them—we did not. We had most every part on hand, I think. We did not have enough parts on hand to supply us from June, 1910, up to December, 1912, without making any new parts. I could not tell how we got those parts.

We got some from the United Company.

941 The Wonder Worker machinery was installed in about five weeks, and we stored the United machines when we removed them. I do not know what has been done with those United machines.

The Plant reversible wiper was embodied in the United Company's bed laster, and the mechanism for cutting off the welt and the stop motion were embodied in the United Company's welter, and the stop motion in the Goodyear stitcher.

I have not noticed any other machines that we now have from the United Company in which Plant improvements have been embodied.

JANUARY 7, 1914.

EDWARD W. BURT, witness for defendants (recalled).

In reference to my statement yesterday on cross-examination that I thought I bought my Eppler machines, I have looked this up, and I find that those Eppler machines were leased to George H. Burt & Company in Brookfield. That was my father's factory. The lease, which is defendants' Exhibit 269, is dated March 18, 1897.

Those Eppler machines were shipped to my factory in lieu of some of the machines that I mentioned yesterday. I want to

correct my statement that I bought them. I was mistaken about that and had forgotten the fact.

These Eppler machines were first used as soon as we started in, about 1898 or 1899.

JANUARY 7, 1914.

GEORGE E. WARREN, witness for defendants.

I am a mechanical engineer and have been in the employ of the United Company since its organization, with the exception of two years. My work for that company has been designing and overseeing the manufacture of shoe machinery. I have devoted my time more particularly to machinery used in sewing shoes. Practically my entire time while I have been with the United Company has been devoted to the study and invention of and work on shoe machinery, particularly sewing machines, Goodyear machinery. My headquarters are in Beverly and Boston.

942 Since I have been with the United Company I have followed the development and improvements of the Goodyear machines, and I am familiar with the machines which were the standard types at various times. I know what improvements have been added from time to time.

In September, 1910, I was requested by Mr. Winslow to go to the Plant factory with several others. Mr. Winslow, Mr. Mayo, who is connected with the United Company as an engineer, Mr. Nelson W. Howard, who has testified, Mr. Benjamin Phillips, and one or two others went at that time. The report which we made at that time was not in writing.

When I was called to Mr. Winslow's office I was told to go with the rest of the gentlemen that were there to the Plant factory and look at any or all of the machines in that factory and examine them to see what features there might be, if any, about the machines that would be valuable if added to our machines, or if they would be any addition in any way to the manufacture of shoes, and I think I spent two or three days there examining practically all of the machines. I reported to Mr. Winslow every night.

As to whether later, after the purchase, I made a more extended examination: Soon after the purchase I was detailed by Mr. C. H. Willson to go to the Plant factory with Mr. Mayo and examine each machine and recommend what should be done with it, and we spent the entire time for a period of about eight weeks examining all the Plant machines, and we reported to Mr. Willson in writing the result of our investigations.

That was the report signed by Mr. Mayo and me that went in as plaintiff's Exhibit 267.

During my investigation of the Plant machines in September the Plant welter and stitcher both impressed me very much, and

I so reported to Mr. Winslow, stating that the advance made in the welter was very great and that the arrangements on the stitcher suggested things to me that would greatly improve our own stitcher.

At that time our model G welter was our standard welter and had been since about 1908. That was run at a speed of a little over 500 revolutions—that is, 500 stitches per minute—as compared with a speed of about 375, at which the prior machine had been run. That model G machine was of entirely different design from prior machines and differed very much from them in many substantial respects. It embodied the principles of sewing in some of the earlier types.

943 This machine did not embody any welt holding or cutting device. We had tried for a number of years to hold the welt, and we had used one or two experimental devices, but their success depended entirely on the operator, and we had never made them commercially successful. We had never attempted to cut the welt.

The model G machine had no device for stopping or turning back the machine at the end of the machine's operations. That had always been done by hand.

The model G machine embodied means which enabled it to sew slower around the toe than on the sides of the shoe. It could be run at any speed.

When I examined the Plant welter in September the things which I thought showed an advance beyond our model G machine and which I thought would improve that machine were as follows:

In the first place, the Plant machine was the first machine that I had ever seen that would stop in the proper position so that the shoe could be removed.

Our model G machine might stop with the needle still in the seam, and the operator had to turn the machine to the proper position so that the shoe could be removed. The Plant welter stopped with the needle free from the seam, so that the machine was ready to begin on another shoe. The mechanism for accomplishing this was absolutely automatic.

Then, it was provided with a welt holder and cutter, which had never been done before, and by such an arrangement the operator always had the same amount of welt when he began the sewing and the same amount when he had finished. This had never been done before, and the lack of this had always been expensive in the manufacture of shoes, on account of the waste of welting.

In connection with that was what we would call a separate device, a welt measurer, which was used in connection with this

cutter and holder, which insured this saving of the welt. Those were the particular features that were an advance over what we had done.

The design of Mr. Plant's welter was new; the method of sewing was exactly what had been used on the older types of machines. There was nothing new about that. Plant added these improved devices to the old type of machine.

944 When we first saw the Plant welter it was running as fast as the model G, and in one or two instances was running faster; but while we were in the factory we saw a great many breakages in the stop motion due to this speed, and the machines which were actually running for a greater part of the time had been reduced somewhat in speed.

The improvements which I noticed in the stitcher, in my September examination, were as follows:

The stitcher was provided with a stop motion similar to that one on the welter, so arranged that the machine would always stop in a proper position to remove a shoe, and so that another could be inserted, and in this stopping it raised the presser-foot which helps hold the shoe in position. Before this it always had been necessary for the operator to stop the machine by hand—remove one hand from the shoe, stop the machine, and then raise the presser-foot so he could remove the work. The presser-foot is one of the work members that holds the shoe in position in the machine.

Also, under the old method, it was necessary for the operator to lift the presser-foot so he could introduce a shoe. Now, in this machine, after the shoe had been finished and removed it was all ready to start again. This was a great saving in time and a great saving in the exertion of the operator.

The Plant stitcher ran at exactly the same speed as our old type of stitcher—375 revolutions per minute. Our later types ran at a speed of over 500.

As to the value of these welter and stitcher improvements, I reported to Mr. Winslow that they were very valuable indeed, and explained to him that while we had a fast machine, well constructed, as we had been a great many years producing this commercial machine, we had not advanced in respect to saving of material and the labor of the operator as Mr. Plant had; that while we had made some attempts to hold the welt we had never attempted in any way to hold it and cut it off as Mr. Plant had; neither had we attempted to stop the machine in the proper place, and that if we could have those things added to what we had already produced in the way of a machine, the art would have advanced very materially. That is, a welter could then be

put upon the market that would be far ahead of anything ever produced; and that the stitcher suggested the stopping and lifting of the presser-foot, which had never been done; and although both in the Plant stitcher and welter the ideas had not been carried out in a mechanical way, and I felt satisfied that they would not stand up and do the work, the ideas were good and valuable. I told Mr. Winslow that we should have them.

945 I later told Mr. Winslow that the improvements on the welter and stitcher were worth all he gave for the entire property, and that was my opinion.

During this preliminary examination in September, I looked at every type of machine Plant had, but did not give such particular attention to lasters and heeling machines as I did to the stitchers, until Mr. Mayo and I went there finally to see what disposition should be made of the machines, and then I examined all of them very carefully.

In my report as a result of that later examination I divided the machines in the Plant factory into groups, and that seems to be the most convenient way to discuss them.

First, some machines were improvements as machines over types which we had, and some were machines which we did not have at all. We recommended that 17 of these machines be adopted by the United Company. The United Company had machines for doing the work of some of these machines, but the Plant machines were of better design and could do the work either faster or better than types which we had.

There were 69 machines and devices in Plant's catalogue. I say devices because I recall that a shoe rack was included and there may have been one or two other things of that nature.

Our second group comprised machines that had never been finished or had only been used experimentally in the Plant factory. They were all in the catalogue, but were not what I would call commercial because even Mr. Plant had not used them, except experimentally. There were 10 of these machines.

The third group comprised machines that were particularly adapted for making shoes by methods peculiar to the Plant factory. For example, Plant had machines for making a special type of innersole, and that was the only factory where that kind of innersole had ever been made, so that those machines were not of generally useful application. In this group were

946 also machines for preparing the shoe for the stitching operation without using a rough rounder, and machines for treeing a shoe on the original last. There were nine machines in this group.

In the next group were 11 machines which we did not consider commercial because, while they did work similar to that done in other factories and while they could be run and were being run in the Plant factory, they were continually giving trouble or would not have been adapted for men's work. We classed those as machines which could not have been marketed as commercial machines.

The next group comprised seven machines that were faulty in construction, although they could have been used. They were so organized that they might cause the operator some trouble, or so that he could not produce quite as much work as he could on other types of machines.

The sixth group comprised 15 machines that were almost identical with machines put out by the United Company. Many of them were exact copies, although the workmanship on them we did not think was quite up to the machines we made.

As to my last group, in looking over the Plant machines we found many devices which would either assist the operator to do more work or better work, which we thought if they were embodied in our machines would be a great improvement, and we recommended that quite a number of those be adopted. And out of that number there were finally thirteen embodied in our machines. A great many more were tried, but were found to be inoperative or not practical.

I think your summary is correct—that there were fifteen machines which were exact copies of ours; there were seven machines of faulty construction; there were eleven machines which we did not consider commercial; and there were nine machines which were adapted only to a particular method which was in use only in the Plant factory. That is forty-two machines out of the sixty-nine.

As to what we have done with the twenty-seven remaining, seventeen were adopted, but we found after adopting them that

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a number of them were not as good as we thought they would be, and especially when they were put on another kind of work. And the result is that several have been wholly reconstructed. Others we had to make some changes in to suit conditions that were different from the conditions in the Plant factory. That comprised all of the adopted machines. That is, we recommended the adoption of seventeen. We adopted all of those, and we have been at work on them since, to make them better if we could. Some of them we are still working on and have not yet been able to make them what we would call commercial. These have all been offered to customers.

As to the devices, of which I said thirteen had been made use of, those have all been added to our machines; made a part of our machines. The experimental department is still working on these things that were obtained from Plant. We recommended more than this thirteen, but we finally adopted the thirteen, and many more are still being experimented with.

The reason why it takes so long to find out whether these machines can be used is because conditions vary so in the different factories that it sometimes takes a year or two to determine whether we shall adopt a machine. We will try out a machine with improved devices in one factory for several months, and then we give the machine a similar trial in some other factory on another kind of work, and we try it out in that way in six or eight different factories.

These machines of Mr. Plant's, built as they were, in my opinion would not have been commercially successful to do work under the varying conditions under which machines have to be supplied to shoe manufacturers. Broadly speaking, they would not have been commercial, for the reason that they had all been made and tried on women's work, and they had no opportunity to try them on any other kind of work, and it has always been the experience of anybody that has designed or made any shoe machinery that you can't tell by trial on one kind of work whether a machine will become commercial or not. It requires these long trials to determine just exactly how a machine will perform on the different kinds of work. The United Company are obliged to make their machines so that they can be used on any work that is presented to them. And in looking over all these Plant machines we found by a careful examination that they were faulty in construction, light in weight in places, and badly designed, so that I feel very sure myself that his machinery as it was being used would not have been commercial in the sense that it could be used on all classes of work.

948 During our long examination of the Plant machines, extending over a period of perhaps two months, we had a good opportunity to observe the breakages in the machines. It was quite frequent in the stop motion of the welter, and in the stitcher, and it was particularly noticeable in the heel attaching machine.

We also noted the breakage of lasts caused by the faulty design or construction of several machines, including particularly the sole layer, leveler, and heel attaching machine. The sole layer and leveler had to apply so much pressure and in such a way to the shoe, which was on the last, that the wood of the last would not stand the strain. The heeling machine was so

arranged and designed that there was great danger that its pressure would overstrain the wood and break the last. It was of course, sometimes impossible to tell what machine broke the last, because the breakage would not always be known until the last had been removed, but these three machines were particularly harsh on the lasts. The breakage of lasts was a very noticeable feature in the Plant factory. We saw a great many lasts that had been broken on one or more of these three machines.

The first group of machines which we recommended for adoption comprised the inner-sole lip wetter, inner-sole flexor, fair-stitch welt attacher, lip turner, outsole wetter, reversible roll channel layer, stitch indenter and burnisher, shoe drier, hard finisher and brush cleaner, shank and forepart burnisher, heel edge and bottom polishing machine, heel scourer, iron lasting bench, cloth cementing and drying creel, outsole flexor, welt slasher and groover, welt seat beader.

This list differs slightly from the list in our written report of plaintiff's Exhibit 267. The heel scourer is in this list, but was not recommended. On further study we adopted that machine. Also there were three devices, a shoe rack and two minor attachments, which we recommended adopting that have not been adopted. The shoe rack was the best rack which I ever saw, but it was too expensive, and we could not find any manufacturer who was willing to pay for so good a rack, so that it was unsalable.

949 Some of these seventeen machines were general department machines but five would be classed as Goodyear auxiliary machines, the innersole lip welter, the innersole flexer, the lip turner, the stitch indenter and burnisher, and the welt slasher and groover. We thought they were good machines and they embodied good ideas, but several of the machines had to be entirely reconstructed to do work in a factory different from Plant's.

The second group, consisting of machines that were either unfinished or had only been used experimentally, comprised the puller over and tip measurer and rapid side laster, tack puller and baster, rough rounder, heel-seat dinker, stitch separator, inner-sole lip cutter and marker, out-sole marker, sole rounder, speed hand laster.

One or two of these machines, particularly the speed hand laster, were used for a short time in the Plant factory, but were abandoned very soon after the acquisition. The speed hand laster was really a tacker for driving tacks when doing side lasting. When we began our long examination of the Plant

machines they were using this speed hand laster, but, before we finished, the work was being done by hand and the speed hand lasters had been removed. It was found that it was very uncertain in its action, that sometimes they would get more than one tack when they wanted only one, and sometimes would not get any at all, and the operator using this machine could not last the upper properly, as his hands were occupied in holding this tacker.

As to the other machines which were either unfinished or experimental, the puller over and tip measurer was never finished and had never been used, although it was in the Plant catalogue. The rapid side laster was similar to our Consolidated hand-method machine, but not in good operative condition, and it had never been used in that factory. The tack puller and baster was never completed, and we were unable to see it in operation. The rough rounder was never completed. As Mr. Plant was making shoes under another method, he said he had no occasion to finish that machine, and it was not in any condition to be shown. The heel-seat dinker was in a similar condition. It never was finished because, under the system of making shoes, it would have no value to him. That is a machine for cutting out the heel seat of the outer sole after it has been attached to the shoe. The stitch separator was only adapted for working on very coarse stitching, and never was operative in that factory, only on such work. The insole lip cutter and marker was used very little, but was found to be very impracticable and was soon removed. The out-sole marker was similar. The sole rounder could not be used on strip stock, and also it did not follow the pattern.

950

Strip stock is a long piece of sole leather from which soles are died or shaped. The sole rounder was continually out of order and, while we saw it run there at one time, it was soon abandoned.

As to the nine machines of group three, which were particularly adapted to work only in the Plant factory, the first five machines were made particularly to make what is called the Plant inner sole. This sole had some features about it that appeared to be good, but on a very careful examination it was found that such a sole as he was using not only had defects, but cost much more than either the Gem or the Economy inner sole, and while those machines that I have mentioned, the five, were good machines and worked properly to make that sole, we don't know of anybody that would care to make it. We have tried it ourselves in one or two factories, and since those trials even

the Plant factory have abandoned some features of that sole and do not now use some of the machinery designed for it.

These five machines were the innersole cloth placer, lip cutter, single lip channel opener and edge compresser, double lip channel opener, innersole cloth tucker and lip trimmer. These machines were not adapted for use on any kind of innersole other than the Plant innersole.

The other four machines of this group were the welt-marking snippers and the shoe channeler, which were used for making shoes without a rough rounder, and the treeing machine and the cleaning and treeing leg, which were used for treeing shoes on the original last.

The Plant method of making shoes without a rough rounder was an old method long in use before the rough rounder was produced, and had been done by hand until he made two machines for helping the operation. By that old process the outer sole is died out to the shape of the finished shoe, or practically that, before it is attached to the shoe. The sole is then laid on the welted shoe and any inaccuracies are trimmed out by a hand operator. Then the sole is channeled. Plant had invented two machines which helped this operation, both the channeling and the placing of the sole.

951 The invention of the rounding and channeling machine revolutionized the methods of attaching the outer sole. In using this machine, after the shoe has been welted a blocked sole, like defendants' Exhibit 102, is placed on the shoe and the desired shape for the sole is produced by the rounding and channeling machine, which at the same time cuts a channel in the bottom of the sole, so that the shoe is all ready to be stitched.

Every manufacturer that I know of is using the blocked sole and the rounding and channeling machine. The cost of making the shoe by the dying-out process has always been more than by the rounding and channeling process.

Plant's method of cleaning and treeing on the last was like the first way of doing it. After all the making operations have been performed upon a shoe it is necessary to iron out the wrinkles in the upper and to clean them, since they get soiled in going about the factory. The original method was to do that while the shoe was on the last upon which it was made, but it was almost impossible to remove the last without breaking or destroying the upper of the shoe, or the shape of the shoe. Then the Miller treeing machine was devised. In using that the last was removed after finishing the making operations, and the shoe

was mounted on a collapsible tree foot which could be expanded to the shape of the original last, and the shoe then cleaned, finished, and ironed. To remove the shoe the form was collapsed and made much smaller, so that the shoe could be removed without spoiling the shape in anyway.

The Plant machines merely handled and held the shoe on the original last, so that all the treeing operations were done without removing the last. The result was that the shape of the shoe was spoiled when it was attempted to remove the last. He made the machines this way to keep clear of our treeing machine.

952 Group No. 4 comprises puller over and tip measurer, heel attacher on wood lasts, stitcher, welt beater, leveler, custom sole layer, toe and heel laster, heel slugger, heel loader, heel breaster, welter. We did not consider these machines commercial for various reasons.

Generally speaking they were of such construction that they would break and get out of order. That was the general criticism on the heel attacher and the heeler. They are practically the same machine, only one is used for Goodyear work and the other for McKay work. The machinery was of such light construction that it was continually broken down at the Plant factory, and we felt sure that if such a machine were tried for men's work it would be even worse, because the pressure in closing the heel down onto the shoe is much greater on a man's shoe than on a woman's shoe. We found parts that would break on a woman's shoe on account of this pressure, and we knew that when we attempted to apply any more pressure the breakage would be more frequent; and, also, there are more nails to drive in a man's shoe than in a woman's shoe, and that would have put additonal strain on the machine, so that there would have been continual trouble in that respect, as there was in doing the woman's shoes. There were many other features about the machine which looked light in construction to us, and which we felt sure would give trouble when attempting to do any heavier work than was then being done upon the machine.

"The stitcher could not be used commercially, because it had never been organized to sew shoes with extension edges. This was a very serious defect, because almost every manufacturer wished to make shoes with extension edges.

As to the importance of this, it is natural, in wearing a shoe, to tread over on the outside, so manufacturers always leave or try to leave more extension of sole on the outside than on the inside, so that in the wear of the shoe the foot will not project

over the sole. In order to get a good, serviceable shoe in making it this way, the stitching must be in relation to this extension edge; that is, it must be a certain distance from the upper on one part of the shoe, and a different distance on another part of the shoe.

The Baltimore edge attachment accomplishes this. It is not exactly automatic, and the different distances of the stitching from the upper are controlled partly by the operator and partly by the shape of the shoe. It is under the operator's control whether he shall sew near the edge of the sole or away from it.

953 Mr. Plant's machine had no Baltimore edge attachment, and it was necessary for the operator to so handle the shoe that he would approximate the position desired. He could not place the stitches accurately at all on a shoe without a channel, and a great many shoes are made without channels. Shoes with extension edges were sewed on the Plant stitcher, but the work was entirely according to the judgment and eye of the operator. It produced very irregular work. The work done on the Plant machine was not anywhere near as good as that produced with the machine with the Baltimore edge device, and would not be accepted in a great many factories. He was trying to do with his stitcher the kind of work which had passed muster before the Baltimore edge attachment was invented. But nearly all manufacturers had adopted and insisted on the Baltimore edge attachment. It produced a good deal better work.

There have always been some shoes made with what they call close edges, which are always the same distance from the upper all the way around. Such a shoe as that, of course, could be done without the Baltimore edge device. But nearly every manufacturer has insisted upon having a machine so organized that they could sew extension edges.

The welt beater was not provided with any means for what is called slashing the welt. That is to say, a welt around the toe of a shoe has to be stretched somewhat on the outside when beating, and to help this it was customary a number of years ago to slash the welt by hand before it was beaten. But the machine produced by the United Shoe Machinery Company would beat and slash this welt at the same time, and all men's work had to be slashed in order to beat it out properly. Hand slashing was not satisfactory, because the operator would be very careless and sometimes cut into the welt too far and spoil it.

We did not consider the leveling machine commercial for several reasons. One was that owing to the pressure required

to level the shoe properly there was very great danger of breaking the last; we saw many lasts which were broken on this machine. Another reason was that the machine required very accurate forms.

These forms are iron or brass molds of the shape desired for the finished sole, and it was necessary to change forms for every different shape of shoe. The forms cost about $22 or $23 a pair. You had to have as many kinds of forms as you had styles of lasts, and when the styles of lasts changed you had to provide new forms.

954 Plant had 194 pairs of these forms and his forms cost something over $4,000. On the United Company's automatic leveling machine there is only one roll required to level any kind of shoe.

We found that the work produced in the Plant factory on the Plant leveling machine was very good, and we recommended that this machine be tried in some other factory, and I did this. But after a trial, when the manufacturer found how many forms the machine would require and how many kinds of lasts he had, he immediately said that the cost of the forms would be prohibitive; so this trial did not amount to anything, and the machine was soon taken out. This alone was so serious a difficulty that the machine would not go.

The same criticism applies to the custom sole layer, which was practically the same machine and required different forms for every shape of last, the same as the leveler. Also this machine was about 50 per cent slower than the machines put out by the United Company.

The toe and heel laster was particularly designed for women's work, and we did not believe it would be suitable for men's work, because the construction was so light that we felt sure that the parts would spring and not properly shape the shoe around the toe or heel of a man's shoe. Of course, we had no opportunity to try this on men's work, but we knew that it did not compare with our No. 5 machine for strength, and that trouble would come if it was attempted to be used on any heavy grade of work.

The heel slugger we found couldn't handle the zinc wire or soft brass wire. This slugger is to put a row of nails or slugs in the bottom of a finished heel—perhaps half a row or two rows—and it is quite common to use zinc and sometimes brass wire for this purpose. The reason they like to use soft brass or zinc is beacuse they finish so much easier, the tops of the slugs finish off so much easier, when they scour the bottom of the heel. The

Plant machine was so designed that you could only use hard wire, hard iron, or hard brass. It wouldn't handle any other kind. We know that because the design was similar to one of our machines we found we could not use soft wire in. And hard wire would have been so much more difficult to finish by the sandpaper process that nobody would have been willing to accept such a machine for that purpose. Also, that same machine was not provided with any means for slugging the heel while it is on the last. Under the Plant system he did not use that machine for slugging a heel in that way. Plant slugged his top lifts before he put them onto the shoe itself.

955 The heel loader was poorly designed in several respects; in general, the design was such that the parts would wear very rapidly. The machines in use at the Plant factory were continually giving trouble, and they only had to handle a small number of nails. Now, the wear and strain on the machine when used for men's work would have been a great deal worse.

The heel breaster was particularly adapted for women's work. There are several types of heels used in men's factories that could not be done on this machine, because either the knife or some of the mechanism was in the way.

The welter was defective in the stop motion and in the mechanisms for holding and cutting the welt. That is to say, the mechanical features in this were not good. The ideas were excellent, but they hadn't been carried out in such a manner that they could have been used in other factories.

The fifth group, consisting of machines very like machines that the United Company manufactured, but faulty in construction, comprised the sole clincher, heel shaver, upper clicking machine, McKay toe cutter-off, bottom buffing machine, loose nailer, top lift compressor.

The clicking machine was more dangerous to operate than the United machine. The very heavy arm on that machine that strikes a heavy blow was brought down on the die by means of a foot treadle. This was continually under the operator's feet and in moving around, unless he used great care, he might have his hand placing the die and at the same time trip the machine, which might take his arm off. The United machine is tripped by hand.

The loose nailer had the disadvantage that it was so constructed that you could not handle a nail longer than seven-eighths of an inch. In some classes of work, heavy double outer soles and spring heels, it is necessary quite often to drive nails longer than that.

Group six consisted of machines which were practically copies of United Company machines. Those were grinder, turn sole molder, tacker, turn heel laster, staple tacker, McKay stitcher, heel-seat nailer, turn shoe trimmer, heel and breast knife grinder, edge trimmer, edge setter, twin bottom cleaner, heel waxer and burnisher, shoe rack, top lift scalloper.

As to the devices on the Plant machines which were adopted and applied to our commercial machines, they were all additions, practically, and when added to our machines made the machine operate either more conveniently or more accurately.

They were all tried out on our type of machine and adopted.

956 Among these were—

From the heel breaster, a guard for the knife, lock for the jack, spreading heel piece, means for taking care of chips, extra pressure device on heels; from the toe and heel laster we adopted a toe head and a pad for McKay work, which allowed the shoe to be held in proper position much more easily then on our machine; this was put into our No. 5 machine and is furnished to customers.

We put on our stitcher a stop motion and presser foot lifting device which performed the same operations as on the Plant stitcher, but they were improved and made much better in every way.

We had never stopped a stitcher with the mechanisms in such a position that a shoe could be removed. Under the system used on all of our stitchers it was necessary for the operator to stop the machine by hand, then lift the presser-foot and remove the shoe; also, to put a shoe in it was necessary to lift it. Seeing the Plant machine suggested that the same thing might be applied to our machine to a great advantage, although we did not do it in the same way. He reversed his machine and then lifted it. We simply stop our machine and lift it at the same time, which is an improvement over the Plant method. But we got all the advantages that were suggested by seeing that machine.

From the Plant welter we adopted the welt holder and cutter, the welt ~~measurer, the stopping mechanism, and some features in the welt~~ measurer, the stopping mechanism, and some features in the welt guide or back gage motion. We improved the stop mechanism very much, and also the cutting mechanism and the welt holder. We also made over the back gage and welt guide motion so as to put it on our machine in better shape than on the Plant machine.

The result of these combinations in both the welter and the stitcher has been a very much better machine than either we or Plant had before.

Assuming that each party had its patents on its respective inventions and devices, neither party could have accomplished the development of the machine which we have now developed, either as a stitcher or a welter, without the aid of the others; nor could either party have developed so satisfactory a machine.

957 From the heeling machine we adopted the device for applying glue to the heels and top lifts, and a device for locking the mechanism which measured the height of the heel.

Summing it up, we adopted 17 machines, most of which went into the general department, and 13 devices and improvements; and we are still at work upon others which have not yet been satisfactorily worked out. Out of the 69 machines and devices shown in the Plant catalogue we have so far made use of 30.

(Cross-examination postponed at request of counsel for petitioner.)

958 JANUARY 7, 1914.

NELSON W. HOWARD, witness for defendants (recalled).

I have been a member of the bar since 1895, and am at the head of the patent department of the United Company. In my previous testimony I have stated my expert qualifications.

Since I have been with the United Company I have devoted myself particularly to a study of the patent aspects of shoe machinery. I have made myself familiar with the inventions and patents of Mr. Plant and with his machines, and also with the patents embodied in the United Company machines adapted for doing work of the same or similar character,

In my opinion 35 Plant machines infringed patents and pending applications owned or controlled by the United Company. Including the Bresnahan sole molder and the Keighley inseam trimmer, both of which Plant had adopted as his machines, one through his ownership of two-thirds of the stock of the Bresnahan Company, and the other by his contract with the Keighley Company, plaintiff's Exhibit 132, the total number of Plant machines which infringed would be 37.

Omitting the Bresnahan and Keighley machines, 96 patents and three applications contained claims which, in my opinion, were infringed by the Plant machines, an aggregate of 99. The total number of claims infringed was 535, counting each infringed claim only once, without regard to the number of machines which infringed it.

In many instances the same patent was infringed by
959 different machines. Including the Bresnahan and Keighley machines, if the patents be counted once for each machine which infringed them, and if each claim be counted once for each instance of infringement, the number of patents would be 132 and the number of claims would be 708.

PUTNAM, J. What is the purpose of the testimony?

Mr. CHOATE. It is further in support of the claim of the United Company that the Plant patents were obtained in good faith, not to acquire a monopoly—to improve the art of shoe manufacturing in a way which could not be accomplished by either party if they stayed as they were; that is, this will immediately develop a situation which will show you that Mr. Plant's machines were infringing the United patents, and some of the United machines were infringing Mr. Plant's patents, which would have resulted in almost endless patent litigation, which was a feature of the situation that the parties were perfectly aware of when the Plant properties were bought.

BROWN, J. As I understand it, pending litigation both ways, or threatened litigation both ways, was one of the inducements to the Plant purchase.

Mr. CHOATE. Yes, sir.

Mr. GREGG. Now, as I understand it, it is Mr. Howard's opinion that certain patents and certain claims of Mr. Plant infringed the United. Now, to rebut that we will be obliged to put in testimony in that connection.

BROWN, J. Then the United States would undoubtedly, on the present aspect of the case, call witnesses to dispute Mr. Howard's opinion as to infringement.

Mr. GREGG. We should certainly do so.

Mr. FOWLER. We want to interpose an objection to their testimony upon the ground that it is not relevant to all the facts that have been heretofore introduced with reference to that Plant purchase, and we want to reserve an exception if it is permitted to go in.

Before the Plant purchase in September, 1910, I had been at work on the Plant patent situation for several years, after the first group of patents was issued to Mr. Plant. But after he took out nearly 100 patents on May 17, 1910, I spent practically all my time on the matter of infringement of our patents by the Plant machines.

In addition to the suits already begun by the United Company against Mr. Plant, bills of complaint had been signed and were ready for filing in a number of additional suits. I was in con-

stant touch with counsel, discussing infringements and submitting proofs of infringements, and as early as July 1, 1910, I was aware of more than 50 patents which I believed were infringed, and before the acquisition in September I was certainly aware of as many as 80 or 90 patents which were infringed. I had already discussed most of these with counsel, and we were ready to go ahead on most of them.

960 Mr. Frederick P. Fish had general charge of all this patent litigation, and Mr. Benjamin Phillips, who had immediate charge of a certain group of the infringements, was acting in cooperation with him and under his instructions.

Seven or eight gentlemen spent several days at the Plant factory examining the machines before the acquisition. Before we went to the Plant factory the bills of complaint which had already been prepared and signed were sent to Mr. Plant's counsel for identification, at the request of Mr. Plant and his counsel; and it was agreed, as I recall it, that no more suits should be brought by the United Company in any event for a specified time, which, as I recall it, was 30 days.

There was also, in my opinion, a considerable number of infringements of patents owned by Plant by United Company machines, quite a number of these infringements being by commercial machines and a large number by experimental machines.

(The testimony set forth in the foregoing paragraph was objected to by counsel for the United States.)

The Plant machines which, in my opinion, infringed United Company's patents were, upper clicking machine, double-lip channel opener, single-lip channel opener and edge compressor, inner-sole flexor, inner-sole cloth tucker and lip trimmer, sole rounder, grinder, top-lift compressor, puller over and tip measurer, rapid side laster, toe and heel laster, turn heel laster, staple tacker, heel-seat nailer, welt slasher and groover, tack puller and baster, welter, custom sole layer, rough rounder, heel-seat dinker, shoe channeler, stitcher, loose nailer, leveler, heel loader, heeler, heel attacher on wood lasts, heel slugger, heel breaster, stitch indenter and burnisher, stitch separator, top-lift scalloper, heel waxer and burnisher, seat beader, treeing machine, Bresnahan automatic sole molding machine, and Keighley inseam trimmer.

Prior to the Plant purchase I was aware that each of the machines which I have named, except the Bresnshan automatic sole molding machine, infringed patents owned or controlled by the United Company.

961 The Plant machines which were involved in the suits for infringement which had already been begun were the toe and heel laster, heel attacher on wood lasts, welter, clicking machine, loose nailer, and stitcher. The product of the welt slasher and groover, and the heel produced by the heel attacher, were the subjects-matter of two suits which had been brought against the Thomas G. Plant Company. The total number of suits were eight suits against Plant and ten suits against the company.

Bills of complaint had been prepared and signed in suits on six more patents for alleged infringement by the loose nailer, stitcher, slugging machine, staple-tacking machine, insole-slashing machine, and the welt grooving and slashing machine,

Q. Please name the patents owned and controlled by the United Company which were infringed, or in your opinion were infringed, by the machines which were the subjects of those suits.

Mr. FOWLER. As I understand it, you are not offering just to show patent protection, but to show a right to purchase the Plant machines.

Mr. CHOATE. Well, there are a number of things I have in my mind, if the court will let me do it, by and by. I am only asking now for the numbers of some patents.

PUTNAM, J. The serial numbers?

Mr. CHOATE. Yes, sir; but I will wait till morning.

BROWN, J. It can be done by list, can't it?

Mr. CHOATE. Yes; if it will save the court's time, Mr. Howard has got this all in the shape of a memorandum, which can go right into the record.

PUTNAM, J. He has a memorandum of the numbers?

Mr. CHOATE. Yes.

PUTNAM, J. It may go in to-morrow morning.

(In the course of a discussion of the admissibility of the foregoing testimony the following statements were made:)

Mr. FISH. There is certainly an allegation that as part of our conspiracy, our unlawful attitude in this whole situation,

962 we bought Plant to aid in building up a monopoly. That is certainly all through the bill. And of course one of our affirmative answers to that position is that when this Plant enterprise had developed to the point of his taking out a lot of patents and building experimental machines and advancing them as of a type that he was going to offer some time or other, when he got ready, to the public, we looked into them and found that there was prospect of the most excruciating patent litigation; that not only did he have many machines that were clearly within our patents, as we looked at them, but that in some cases

in the development of the art he had struck upon the same ideas that we had, that were in course of development; and our definite contention is that at least part of the reason for buying the Plant property, Plant's patents, was to avoid the condition, that would have arisen, of an infinite amount of patent litigation. And to show that one of our motives—others have been suggested already—was to clean up a very complicated and nasty patent situation that would have been most demoralizing to our business, it seems to me, is a legitimate part of our defence. That is exactly the fact.

This is where we put it as affirmative defence. Your honors will bear in mind that it isn't merely Plant. We want to put in the same class of testimony as to some other acquisitions, and our answer says:

"The greater part of said acquisitions are entirely new fields, having no connection with the machines originally acquired, owned and manufactured by said United Shoe Machinery Company, of New Jersey. Some of said acquisitions have more or less relation to the original lines of shoe machinery owned by said United Shoe Machinery Company, of New Jersey, and were acquired by it for the purpose of compromising, settling, and avoiding expensive patent litigation, and for the purpose of protecting its lessees from suits for infringement of letters patent."

963 Mr. FOWLER. Your honor will see what it leads to. We will have to introduce experts to show that Mr. Howard was mistaken as to each one of these particular claims, and he must have been mistaken if he had any reasonable knowledge of the patent law, so you will have 700 and odd patent suits here to try, because Mr. Howard says there were 700 and odd claims that had been infringed.

PUTNAM, J. Haven't you a right to maintain that this matter of patent litigation did not enter into the negotiations at the time the negotiations were made?

Mr. FOWLER. That is our contention.

PUTNAM, J. Can't you maintain that proposition? And if you submit evidence under this proposition, aren't you all right?

Mr. FOWLER. Your honors can see this: If they are permitted to go into that question, we will want to go into that question. Your honors will see that the United States will insist that if they are to be permitted to go into that question at all the United States should not be restricted.

Mr. CHOATE. Will the court permit me to suspend this witness in order to put on some other witnesses?

JANUARY 8, 1914.

NATHANIEL C. SMALL, witness for defendants.

I am engaged in the manufacture of shoes in Auburn, Maine. The name of my firm is Ashe, Noyes & Small Company. I am treasurer of the corporation and have a certain part of the management of the manufacture of the shoes.

I have met and talked with Ned Pike, a representative of the Haverhill Shoe Machinery Company. He came and solicited us to put in his machines. With reference to his statement in his testimony:

"The statement that they made to me was that under the existing leases of the United Shoe Machinery Company it would be impossible for them to install machinery unless they laid themselves open to a great of deal of trouble—conflict with the United Company."

I never made such a statement to him.

In our conversation he did most of the talking; I did most of the listening. He told how many machines he had in Haverhill, something like 50, and I think about a dozen outside of Haverhill. I told him we had been all through this nonroyalty
964 business and we had found that it was such a troublesome matter and such a loss to us that we could not consider any outside machines; that we could get a man to repair United machines at a moment's notice from the United Company's office in Auburn; and that we had all kinds of trouble with a Campbell machine that we used which bothered us so much that we were very glad to sell it to the United Company for junk, which was what we considered it. We bought that machine outright to sew turn shoes with, without any royalty. We had all kinds of trouble with it and we could not get an operator that would stay on the machine. They did not furnish anybody to teach operators or to keep the machine in repair. Whenever we broke a part or the machine got so the operator could not fix it, we would have to send to the main office, in Boston I think it was, to get a man to come down.

From its Auburn office the United Company furnishes mechanics or agents to put our machines into condition again so that the operator could use them. This service that the United Company gives with its machines means a great deal in our case. When the Campbell machine broke down we had to wait for parts or get a man from Massachusetts to fix it. We had to send and get a man a good many times.

I did not make any statement to Mr. Pike which was at all to the effect that I would not put in his machines because of the existing leases with the United Company.

Cross-examination:

Our daily capacity is about 1,000 pairs. We manufacture turn shoes, mostly. We began three or four years ago to make a few welt shoes. We have one complete system of United machines for making welt shoes.

The Campbell machine about which I testified we obtained from the Campbell Machine Company something like a dozen or 15 years ago, and we turned it back to the United Company about six years ago. We got $200 for it. We had not used it for some time and had given it up.

965 The machines which we have in the bottoming department, excepting United Company machines, are a buffing machine made by the Boylston Manufacturing Company, and an edge setting machine that the United Company now has, but which was not bought of them.

JANUARY 8, 1914.

WILLARD A. NOYES, witness for defendants.

I am a dirctor of the Ashe, Noyes & Small Company, of Auburn, Maine. I attend to the buying of the uppper stock and anything pertaining to the uppers of the shoes. Mr. Ashe is not active in the management of the concern, and Mr. Small and I are the active men.

With reference to the testimony of Mr. Ned Pike, a representative of the Haverhill Shoe Machinery Company, that he came to our factory and attempted to install some of their machines there and that the statement was made to him that under the existing leases of the United Company it would be impossible for our concern to install their machinery unless we laid ourselves open to conflict with the United Company, I know that there was a gentleman there representing the Haverhill Company, but no such statement as that was made to him with my knowledge.

While the gentleman was talking with Mr. Small I passed through the office and was asked to look at a picture of a machine that would sew turn shoes. I glanced at the picture and asked what advantage the machine had. One of the replies was that it was a nonroyalty machine. I said that it did not interest me in the least; that the saving of royalty on our turn machine would not offset the value of the United Company to us. So far as I know that was all the conversation I had with him in any business way.

Cross-examination:

In my conversation with Mr. Pike nothing was said about the leases which we had with the United Company. They were not

mentioned. Neither I nor my company owns any stock in the United Company.

966

JANUARY 8, 1914.

FREDERICK J. GROSS, witness for defendants.

I am a shoe manufacturer in Auburn, Maine. My concern is Field Brothers & Gross Company. I have been connected with that concern ever since we were incorporated in 1902, and have been in the shoe manufacturing business for 30 years. I came pretty near working up from the bottom; started with a dollar a day.

I first had to do with installing machinery in a factory which I had charge of in Brockton, about 24 years ago. At the Brockton factory I was in the same capacity as now—superintendent and treasurer. I have full control of the purchasing and manufacturing end. I decide what machines we will have and how we will get them.

We moved to Auburn, Maine, in November, 1903, and I had to do with equipping the factory with machinery. We have been adding to it every year since.

We make men's cheap Goodyear welts, retailing at $2.50 and $3. Our maximum output is 7,200 pairs a day.

We get our welting and stitching, heeling and fastening machines from the United Company. Most of the machines are on the restricted form of lease. The welters, the stitchers, the heelers, and all those are on restricted leases. I took that form of lease because it was to my advantege. The advantage is that I have no capital tied up in machinery and I got the improvements made in machines from time to time.

I have had experience in former years with buying and owning some of our machines. In the old way our business was restricted because we had to consider each time whether we could afford to buy a particular machine to increase our product. Under present methods we forget that, and it is the last thing we think of. We never figure the expense of machinery on our production, because we know that is all right anyway.

967 I consider the success of our business in Auburn to-day is the service that the United Company has given us. We saw fit to move from Brockton, Massachusetts, to Auburn, Maine, into a territory where they never made men's welt shoes, and it was necessary for those people down there to be instructed to operate those machines. And I asked the United what they could do for us, and they told us that they would set the machines up, instruct the operators, and they sent me six to eight men from their different territory in addition to what they had

in their Auburn office, what they could spare. They set up our machines and equipped our factory with machines and instructed the operators; and it must have been an expense for them, because we were not making shoes enough to offset what they were paying for the agents, and we must have been, the first year or two, an expense to them. They did not charge us a cent for that work.

When there was a new or improved machine we would take it and our only expense was for missing or broken parts on the old machine when we returned it. We have a full equipment of the new welters and new stitchers. We began to put them in about 15 months ago and have been running them exclusively for six or eight months.

Our reason for changing from the old to the new machines was that we saved on welting, on labor and on floor space; it did not take so much floor space because the capacity of the machines was increased about 25 per cent, from about 30 to 40 dozen pairs a day, and we needed fewer machines to do the same work. I am now speaking of the welter. Last year our operators earned from 10 to 25 per cent more than on the old machines but it costs us less. We saved last year from $7,000 to $9,000 as a result of the improvements on the welter and stitcher. The million and a half pairs which we produced last year were worth approximately from two million and three-quarters to three million dollars.

As to just what the improvements were which have brought about that saving, by the old method of welting the operator would have to take his knife and cut off the end of the welting,

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and the majority of them were careless and expensive; they were not paying for the welting and we were. The stitcher was more rapid and would sew many more stitches. On the old machine the operator had to put his hand up on the wheel to stop the machine. On the present machine he does not. It makes him stitch more shoes and it is more rapid.

Cross-examination:

At the time we took our machines we considered both forms of leases, the restricted form and the other. We had an option for taking either one. In answer to the question, for what machine, I won't say for what individual machine, because I do not recall that; but the only form we wanted was this one, because we didn't want to make an investment of our capital in machinery. I could not tell you whether there is any difference, beside the initial payment, between the restricted and unrestricted form of leases. That does not interest me and never did.

At present we have no machines in our factory in the bottoming room except the United Company's. About a year ago we had one of the Keighley inseam trimming machines. We tried it out to see whether it was a better or more economical machine than the United Company's machine that we were already running. We gave it a thorough trial and discovered that it was not to our advantage to use it. We had not bought it but had it on trial.

Our operators on the old welter did about 30 dozen pairs a day, and on the new welter they average about 40. Some will do 45. The increased capacity was about 25 per cent.

The saving of from $7,000 to $9,000 is in welt and labor. The new machine cuts it off close right after it gets through stitching it, and the old way was cutting it off by hand.

We get new parts for the machines from the United Company, and we pay for the parts which replace broken and worn our parts.

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GEORGE E. WARREN, witness for defendants, resumed.

Cross-examination:

I have been in the employ of the United Company since its organization, except for two years. As to whether I am a patent expert, well, a mechanical patent expert. I am not a patent lawyer. During the two years when I did not work for the United Company, from 1904 to 1906, I was with the Metallic Heel and Counter Company, in Boston. That company is not now in existence. Most of its assets were sold to the United Company, and then I went back to the United Company.

The first time I heard of the Plant purchase being contemplated was when I was asked to go up to the factory to examine the machines. That was early in September, 1910. Mr. Winslow, Mr. Mayo, Mr. Howard, Mr. Phillips, and I think, two or three others of our own men, went with me to the Plant factory. I do not remember their names. They were all representatives or employees of the United Company.

Two men, representing Mr. Plant or the Plant factory, were detailed to go with Mr. Phillips and me wherever we wished to go. One was Mr. Bohr. I think the other was Mr. McLeod. The United Company representatives did not go through the factory together. Mr. Phillips, who is a patent lawyer, and I went together.

We left Mr. Winslow's office a little before 2 o'clock, and I think we began the investigation about two in the afternoon. We spent the balance of the first day up to five or six o'clock in

the Plant factory; the next day from perhaps nine in the morning until five, and I do not remember whether or not we were there all day on the third day. I do not know the total number of machines in Plant's factory. I examined all the types of machines. There may have been 30 to 40 machines of one type. There was a representative in the Plant factory of each type of the 69 machines in the Plant catalogue, and we saw them all, but not all in operation.

It was a very large factory and had a capacity of 10,000 pairs a day or more, and was in full operation at that time.

970 I did not see the machines in any particular order. Both Mr. Phillips and I desired first to see the welter and stitcher. From there on we did not take the machines in regular order, but before the three days were finished I had seen all of the machines.

The welter and stitcher were the machines I asked to see, and those were the machines with reference to which I had made particular study and had special knowledge. At that time I probably did not look at the welter and stitcher together for more than a hour.

I found a welter which was welting shoes and doing the work rapidly. They were running it at different speeds, some of them as fast as we run ours. The work on the shoe looked very well. The product was a medium grade shoe.

About as many shoes were being done on that welter, while I saw it running, as were ordinarily done on the United Company welter.

I could hardly compare the United Company model G machine with the Plant machine because the model G machine was a better machine mechanically, but Plant had improvements that the model G did not have. If I had been going into the manufacturing business I should have selected the model G machine, because, before finishing my examination, I was very sure that the Plant machine as organized would not stand up and do the work, although I was much impressed with the improvements. I regarded the United Company welter as mechanically superior, and, taken as a whole, to some extent a superior machine to the Plant machine.

Q. Now, in regard to the mechanical construction of that welter, Mr. Warren, that was something that could have been easily remedied, was it not?

A. Well, it would have taken him years to remedy those things.

I can't tell exactly how long it took for us to change the construction of our model G machine so as to put out the model K, but as soon as we had purchased the Plant machines we immediately had five engineers or mechanics trying to improve the G so that it would include all the improvements purchased from Plant, and we made five different models and tried them in factories before we adopted one.

971 I can not tell you exactly how much time that took, but we worked night and day to get a model that would suit the manufacturer. I should judge that it took more than a year.

I haven't the slightest idea how many mechanics Mr. Plant could have put to work to perfect his welter.

As to the defects in the mechanical construction of the Plant welter, it would be rather difficult to state the detailed construction of the machine, but we know that in a machine as intricate as a welting machine all the parts must cooperate perfectly in their action in order to ensure good work all the time, and in my experience in designing welting machines I could see places in the Plant machine where I felt very sure that it would in time give trouble. A particular weakness was the construction of the welt-guide and back-gage movement. With the particular mechanism used and the lightness of its construction this would not have lasted any time at all.

Q. Couldn't it have been made a little heavier?

A. When we say that, that leads to a change in some other part of the machine. It might finally mean a total reorganization of a machine to make it better.

Q. But you don't mean to say, Mr. Warren, that that machine could not have been taken up by a mechanical expert or five mechanical experts, and those various defects taken out of it within a few months' time or a year's time, say?

A. I think when they had done that they would probably have had a machine like ours.

Our machine was a good one and was working all right.

One improvement which Mr. Plant had made on the welter was the stop motion. We did not have any machine on which there was an attachment of exactly that character. It had been customary for a great many years to make shoe machines that would stop in some part of the cycle, such as tackers and sluggers and machines of that sort, and one type of McKay sewing machine; but there had never been a welter that would do that. This was the only welt machine that had ever been stopped in position so that the work could be removed with-

out some effort on the part of the operator and in position so that a new shoe could be presented. Even in McKay
972 sewing machines and in welt machines, on which I had worked myself, we were never able to stop the machine without such damage to the machine that it was impossible to make the machine stand up at the speed at which they were run. Also we were never able to remove the loop of thread from the needle so that the shoe could be taken out.

The broad distinction between the Plant device and the devices which had been attached to other machines was that previously a machine had always been stopped by cutting off the power and interposing some device which it would run up against. In the Plant machine it came up against a device which reversed it and stopped it, and that was what stopped the machine in position so that the shoe could be removed. In the devices which we have adopted the machine is slowed down to a predetermined speed and then stopped from that. The principle of this construction was a slip clutch. Many machines had previously been stopped by using a clutch or brake but our machine slows down to a predetermined speed. Our machine always stops the same way whether the machine was running 300 or 500. It always comes up against the final stop at the same predetermined speed. Under the old methods a machine run at 100 would not break when it came up against a stop, but when it was speeded up to 500 and it was stopped, it would break the machine all to pieces. Our machine would be reduced to 100 before it was stopped, and that was done by what we call a slipping clutch.

That attachment was not placed on our model K machine just as we found it on the Plant machine. It is entirely different in construction. The principle of the Plant machine is in the model K, but the mechanical part is entirely different. You would hardly recognize the mechanical features. The broad feature of the Plant machine, its principle, was embodied in our machine, but by an entirely different mechanical construction.

973 We had no welt cutter prior to the Plant acquisition, and so far as I know we had no application for a patent on a welt cutter. This mechanism was not transferred to the model K machine just as Plant was using it. We retained the principle of holding and cutting by one device, but the mechanical construction had to be entirely changed in order to apply it to our machine, which was of different design. There were parts which were similar but not the same. It operates in the same

way, except that the man had to operate the Plant device and we saw that we could improve it by having the machine actuate it. In our machine the machine itself operates it when the man gets ready to remove the shoe.

The principle of the model K device is the same as the Plant device, but the mechanical construction is entirely different. All that one not acquainted with the principle would notice is that the two machines cut the welt and hold it, and that is all.

Q. Then these great improvements and savings which have been spoken about in the testimony here are the results of the device that has been placed on your model K machine, and not of the Plant device at all, isn't that true?

A. These Plant devices were placed on the model K.

Q. What you mean to say is that it is the principle which has been worked out through a new mechanical device?

A. Exactly.

Q. And those devices placed on your machines?

A. That is it exactly.

Q. And the devices which have been constructed by the United Company and not by Plant are the devices which have made the savings?

A. The particular devices have been constructed by us.

Another improvement on the Plant machine was the welt measurer, which always determined how much welt would be left on the shoe when the man cut it off. Even with the welt holder and cutter the man could pull the welt through and not cut it until he had six inches of welt standing out from the shoe. The advantage of this device was that he could not have more than a fixed amount of welt left on the shoe when he cut it.

There was especial advantage in using the welt measurer and welt cutter together. They had to be used together to make the saving in the welt.

974 The mechanical construction of that device placed on our model K machine was not the same as the Plant device, but it was not changed as much as the welt cutter and holder and the stop motion. It looked more like the Plant device than they did.

The five mechanical engineers who made the changes in adapting the Plant improvements to the model K machine were Messrs. Topham, Latham, Winkley, Stewart, and Simmons, all connected with the United Company. I had supervision of their work. A great many applications for new patents have been made by these gentlemen on principles embodied in these devices which were not in the Plant devices. I do not know that all the

applications are based on improvements embodied in the model K machine; we are working on these devices all the time; but many of the principles of these applications are in the model K machine.

These Plant improvements on the welter were the things which especially impressed me. It was with reference to the welter and the stitcher improvements that I told Mr. Winslow that those improvements were worth all that he paid to Plant. It was soon after the purchase that I made this statement, when we were actively engaged in producing a machine for the market. I do not know whether it was while Mr. Mayo and I were making our report.

As to my division of the Plant machines into six groups, the first group comprised the machines which we advised the United Company to adopt. In that group were some Goodyear auxiliaries. I am not quite sure whether some of them should go into the Goodyear department or general department, because I am not acquainted with the method of classification, but my recollection is that the inner-sole lip wetter, insole flexor, lip turner, stitch indenter and burnisher, cloth cementing and drying creel, welt slasher and groover would be in the Goodyear department.

The Plant insole flexor flexed the sole in an improved manner, entirely different from anything which had been done before.

975 The United Company machine did not flex the sole in the same way, and it did not get the same result. The Plant machine obtained a better result. Flexing a sole is making it easier to bend, so that the shoe will be easier on the foot of the wearer.

As to the other machines, the United Company had machines that would accomplish exactly the same result, but the Plant machines were better than any that we had. In studying those machines we concluded that they were some better than the machines which we had. We thought they would be better to use in any factory, and wished to be ready to offer them to manufacturers. I would not have based a recommendation to pay $6,000,000 on those machines.

The second class of machines was composed of experimental or unfinished machines. At that time we did not attach any especial value to them, but after a very careful study of them we simply recommended in some cases that they be experimented with further to see if we could find anything of value in them. That recommendation was made after the purchase. We are experimenting with them now. We made no recommendation based on those machines with reference to the purchase.

One or two of these machines were running part of the time in Plant's factory; some of them had never been belted up at all. He was making shoes without these machines. The sole rounder, for instance, did not work satisfactorily, and Plant was dieing soles out on another machine. Most of these machines were not used because they did not work properly, and he was doing the work in some other way.

As to the third group, consisting of nine machines peculiarly adapted to Plant's work, we only advised that some of these machines be tried to see if the manufacturer desired to use those methods, and they were tried. I did not recommend any purchase, but I would not have recommended that he make any purchase so far as these machines were concerned.

The fourth group comprised 11 machines which I did not consider commercial at all.

976 The fifth group were a number of machines which were faulty in construction. One of these machines belonged to the general department: I think the rest were either metallic or heeling. At this time the United Company was putting our machines of the same character and machines which we believed were doing better work than the Plant machines.

The sixth group were practically duplicates of United Company machines.

We recommended the adoption of more than 13 devices, but we tried a good many of them and found we could not use them. We finally took 13. These 13 devices all applied to the heel breaster, a general department machine, the toe and heel laster, stitcher, welter, and heel attacher, five machines.

All that the United Company bought from Plant which I regard as of any value at all were those 13 appliances, which are now embodied in five machines, and the 17 machines that I recommended should be adopted instead of the United Company's machines.

I was in the Plant factory two days and a part of another day examining the Plant machines. I reported to Mr. Winslow. I did not advise him to purchase the Plant properties and did not know whether he was going there to purchase them or not. My orders were to look at the machines and tell Mr. Winslow, or report, what I could see in the machines that would be of value or that would improve our machines, to improve the art of making shoes.

My report to Mr. Winslow was not so minute, not so detailed, as my testimony here. The first night I saw Mr. Winslow I had only been there one afternoon. I reported that I was satisfied

with what I had seen on the welter and stitcher. Of course I did not feel so sure at that time about these other machines and devices, and only suggested that some of them would likely be valuable.

977 As to whether the only things I did recommend particularly to Mr. Winslow were the devices on the welter and stitcher, those were the things I was sure of. The other things I stated to Mr. Winslow I was uncertain about. I made those statements to Mr. Winslow before the purchase was made. I think the purchase was made immediately; soon afterwards, within a day or two. Mr. Winslow didn't ask me the value of Plant's patents.

I told Mr. Winslow that the welter and stitcher were very valuable devices; that the machines themselves were defective, but that the Plant devices combined with ours would make the welter and stitcher art further advanced than it had ever been before.

I did not undertake to fix any value, and he did not ask me to.

I talked with Mr. Winslow about the machines during two or three evenings before the purchase was made. All who went to the Plant factory when I did were present.

I stated to Mr. Winslow at that time that the principle involved in the Plant machines would have to be worked over and new mechanical devices made to carry them into operation. I was very emphatic about that, that the Plant machines as they were would not be commercial; we could not use them as they were, but that we would have to work them over entirely, and that we would have to work over those particular mechanisms or devices. I also stated that our machines, the welter and stitcher, were the best foundation on which to make an improved machine.

I have had no experience in manufacturing shoes. They were making complete shoes in the Plant factory, and had a complete installation of welting machines.

After the Plant purchase had been made I was detailed with others to make a special study of all these machines. These various groups into which I have divided the machines are practically a result of that study. The report of plaintiff's Exhibit 267 may differ somewhat from my method of presenting the matter here, but it is practically the same. That report embraced the conclusions that were reached by me and my associate, and my testimony here is somewhat of an elaboration of that report, incorporating some changes since. In connection with that report I spent the entire time for eight

weeks in studying the Plant machines, and did nothing else during those eight weeks.

978 In that report we stated that the United Company had a welt holder. We had been working for a number of years on the problem of holding the welt, and had had several devices out experimentally, but they were defective because it was entirely in the control of the operator whether he used the holder with one inch or six inches of welt through the welt guide.

In the use of the Plant stopping device the machine would go by the stopping point and reverse and come back to it. Our machine goes to a predetermined point and then reverses, the same as the Plant device. In both machines the machine is stopped in a certain part of the cycle of the operations, then it reverses and comes back to a predetermined point. In both cases there is a backward motion of the machine.

Direct examination resumed:

The welt holder with which the United Company's people had been experimenting was in no sense commercially successful. It was not at all satisfactory even to the men who were working on it. We had several designs out, but they had all been returned. We had never hit upon the thing which Mr. Plant had developed. That was new and a distinct advance over any lines along which we had been working, because he had combined the holder with the cutter, and it was the two together that gave the advantage of saving the welt— our idea combined with his idea.

The stopping and reversing of the welter was a new thing—something I had never seen before.

Q. And Mr. Fowler called your attention to the fact that devices had been in use on other machines for stopping them, but was this principle that Mr. Plant evolved something new and different from anything that had been in use before?

A. This was entirely new. As I stated before, the machine had never been stopped so that you could remove the work.

Whatever devices for stopping other machines had been invented before, they never had been of successful application to the welter and stitcher.

979 As to the occasion or necessity for altering Plant's mechanical construction, the problem which we had presented to us in connection with the Plant improvements on the welter was this: Knowing the good features of the United Company machine and the good features of the Plant machine, shall we take the Plant machine with the stop motion and welt cutters, improve those, and add the good features of our machine,

or shall we take the United machine and rearrange that with the Plant improvements on it. After considering the matter we decided that the United machine was better as a foundation.

The sewing mechanisms and the machine in construction was much better, but, owing to the different design, the particular mechanism that Mr. Plant had in use could not be applied to our machines; also there were features, even in the good ideas of Plant, that were bad mechanically, and the result was we took our model G machine, which we were satisfied at that time was the best thing as a sewing device, and redesigned all the Plant features so that they could be adapted to this machine which we had, thereby producing the improved model which we now use—in a word, we took Plant's idea and adapted it to use on our machine.

The suggestion in Mr. Fowler's questions that there wasn't anything in Mr. Plant's idea after all, that it was really the idea of the inventors of the United Company, is not correct at all. It was their skill in applying the broad features of the Plant inventions to our machines which resulted in these improvements.

As to the stop motion, consisting in turning back the machine so that it would be ready for the next operation, nothing of that kind had ever been worked out before or had ever been applied to any machine. The reason why this was so fundamentally important was that even if the welting machine had been stopped before with the needle in proper position out of the work, there would have been the difficulty that there was still a loop of thread through the shoe and around the needle, and you could not get the loop of thread off the barb of the needle without either reversing the machine by hand so as to loosen the loop or cutting the loop. In hand-operated machines it was necessary for the
980 operator to free the needle from the loop before he could remove the work.

When the plant machine stopped the shoe could be removed without any labor or thought on the part of the operator. That was entirely new. The operator simply had to draw the shoe with his left hand to the left, and that cut the welt and released the shoe from the machine and left the machine all ready to insert the next shoe.

Cross-examination resumed:

Before the Plant improvement, when the machine stopped the thread was still through the material and around the needle. The condition at the present time is, when the operator decides that he wants to stop the machine and takes his foot from the treadle, the machine is in position to remove the shoe and there

is no thread on the needle. The thread has come out of the needle. That was a very important part of the Plant invention.

I do not know what the patent was on this invention or whether it was one patent or two; that is what the machine did.

The freeing of the loop of the thread is the particular thing to which I attach importance. It would have been of no use just to stop the machine and not take the thread from it, because after stopping the machine the operator would have had to handle the flywheel in order to remove the thread. This machine was so arranged that stopping it removed the thread from the needle, and that was the particular thing that saved time.

I do not believe any patents have issued on the several applitions on the improvements in the Plant devices which the United Company made to carry Plant's ideas into effect. I am not sure.

The design of the Plant stitcher was the same as that of the old French & Meyer stitcher—that is the stitcher of 1899—with the exception that it was not arranged so that you could stitch extension edges, and it had the Plant stopping mechanism which the old machine did not have.

981 There are four patents covering the extension edge mechanism. These are 675,783, June 4, 1901, Meloon; 563,471, July 7, 1896, French and Meyer; 563,472, July 7, 1896, French and Meyer; 582,510, May 11, 1897, Shriner and Adams.

The method of thread handling in the Plant welter was the same as in the 1899 welter. The stitch-forming mechanism was substantially the same. The Plant welter did not have any method of slowing the machine down before it reached the reversing point. It would run at a fixed speed. If it were attempted to run it any slower, the chances were that the stop motion would be thrown into action and stop the machine. Consequently the machine had to run practically at one speed all the time, so that they could not get the varying speeds that the operator might want in sewing the shoe.

We can run the model K machine at any speed we wish without throwing in the stop motion. The Plant machine would have to run at practically one speed—there was a little variation—or else it would stop.

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NELSON W. HOWARD, resumed:

Q. Mr. Howard, since you were on the stand yesterday, have you had prepared a list of the patents that were involved in the suits brought by the United Company against Mr. Plant and the Plant Company?

A. Yes, sir; I have.

Q. The name, number, and the date of issue?

A. Yes, sir. The patents on which infringement suits had already been begun by the United Company before the date of the Plant acquisition were the following:

Mr. CHOATE. I think if the other side consent we can put these right in and save the court's time. I have given Mr. Fowler a copy.

(List entitled "Infringement suits which had been begun against Thomas G. Plant and Thomas G. Plant Company" is marked "Defendants' Exhibit 270," Rec., p. —.)

The WITNESS. Defendants' Exhibit 271 (Rec., p. —) is a list of patents of the United Company which in my opinion were infringed by the Plant machines, the infringed patents being enumerated under the name of each Plant machine. Under the heading in that exhibit "Date of application" I have stated the filing date of the application for the patent, where it was granted after the date of the Plant acquisition. In every case where the patent was granted after that date, the date of the application was prior to the Plant purchase.

Copies of the patents of the United Company enumerated in defendants' Exhibit 271, which, in my opinion, were infringed by the Plant machines, constitute defendants' Exhibit 276, a physical exhibit.

Twenty-three interferences which had been declared in the Patent Office, before the Plant acquisition, between pending applications owned by Plant and applications owned by the United Company, are enumerated in defendants' Exhibit 272 (Rec., p. —).

983 Nearly all of the interferences in that exhibit related to different machines. In a few instances several of the interferences related to the same machine. The interferences had all been declared before the date of the Plant acquisition.

Q. Are you prepared, Mr. Howard, if the court desires it, to point out the respect in which, in your opinion, the Plant machines infringed the various patents of the United Company which are included in the list which you have just filed?

A. Yes, sir; I am prepared so state whether, in my opinion, the general organization of the Plant machines, or a portion of the machine, infringed claims of the United Company's patents, and I am prepared to give the numbers of the claims which, in my opinion, were infringed, and specifically to give the numbers of the claims which, in my opinion, were infringed by either the organization as a whole or the specific parts respectively.

Q. And you have got that all in a typewritten memorandum prepared?

A. Yes, sir.

Mr. CHOATE. If that would help you any in your cross-examination or your answer, we will put that in by simply filing the memorandum.

(Nelson W. Howard's memorandum of the details of the infringement by the Plant machines of patents and applications of the United Shoe Machinery Company is marked "Defendants' Exhibit 273," Rec., p. —.)

Q. Does that show anything, Mr. Howard, as to the infringements of the Plant patents by the United Company?

A. No, sir.

Q. You have a separate memorandum of the details of that?

A. Yes, sir. (Producing a memorandum.)

(Nelson W. Howard's memorandum of the details of the infringement of Plant patents by machines of the United Shoe Machinery Company is marked "Defendants' Exhibit 274," Rec., p. —.)

984 Copies of the Plant patents named in defendants' Exhibit 274, which, in my opinion, were infringed by the United Company's machines, constitute defendants' Exhibit 277, a physical exhibit.

As regards the other acquisitions by the United Company which are set out in the petition, in some cases there were interferences pending in the Patent Office; in others, actual litigation, or, in my opinion, such a conflict of patents as to threaten litigation; or a field which we desired to enter was absolutely dominated, in our opinion, by patents owned by the acquired company; or the acquired company had inventions which we believed we ought to have and must have to make our machines commercially satisfactory. One or the other of these five reasons applied to each of the acquired companies named below, at the time of its acquisition. Sometimes more than one applied to a given company.

One or more of these reasons applied to each of the following acquisitions: Goddu Sons Metal Fastening Company, Peter A. Coupal and William Gordon, Edwin T. Freeman, Albert G. Brewer, Globe Shoe Tool Company, Seaver Process Lasting Company, Boston Fast Color Eyelet Company, Enamel Eyelet Company, Bay State International Shoe Machinery Company, Swain-Fuller Manufacturing Company, Globe Sewing Machine Company, Boot & Shoe Sole Laying Company, J. C. Rhodes & Company, Morley Button Manufacturing Company, American Sole Laying Machine Company, G. W. Emerson & Company, Booth Brothers, Brockton Supply Company, Smith Lacing Machine Company, Zotique Beaudry, Richardson Shoe Machinery Com-

pany, Ellis Lacer Company, The Wentworth Company, Adam H. Prenzel, M. V. Bresnahan & Company, C. P. Stanbon & Company.

I have prepared a statement of the patent problems and difficulties which, in my opinion, existed in respect to the acquisitions named above. This statement, which is defendants' Exhibit 275 (Rec., p. —), sets forth the details of the situations which I have indicated and which, in my opinion, existed in respect to each of these concerns.

A list of the patents named in defendants' Exhibit 275 and copies of those patents constitute defendants' Exhibits 322 and and 323, which are physical exhibits.

985 The problems and difficulties presented by these patent complications which attended acquisitions between 1899 and 1911, and which are described in detail in defendants' Exhibit 275, were always communicated by me or by persons working under me to the executive officers of the company, and in every instance they were the subject of study before the several acquisitions were made.

All of the patent difficulties and complications attending the Plant situation of which I was aware before the Plant purchase were communicated by me to the executive officers of the company and to the counsel, Mr. Fish and his associates, who were preparing the bills of complaint. These patent difficulties were the subject of extended discussion with the officers of the company. I used to report to Mr. Winslow very frequently, submitting to him a list of the patents which in my opinion were infringed and of the machines which I believed infringed them, and practically every time that I had a new group to tell him about I submitted a new list. My consultations with counsel were had under his instructions after my reports to him. He also attended a number of the conferences between counsel and myself at which infringements and the policy to be followed in bringing suits were discussed.

I knew about nearly all of these patent conflicts and difficulties which I believe existed between Plant and the United Company before the Plant purchase. Of course, our work on infringements stopped with the acquisition, and such additional infringements as I am now aware of are those which I have stumbled on since. Nearly all of the questions which had existed in my mind as to the construction of the Plant machines I answered satisfactorily to myself during the two days and one-half that I spent in the Plant factory with the group of gentlemen, including Mr. Winslow, who went there about the middle of September.

986 I had been working on this Plant patent situation more or less since the first group of Plant patents had issued two or three years before the acquisition. On May 17, 1910, nearly 100 patents were granted to Plant, and from that date until the date of the acquisition nearly all of my time and a large part of the time of my associates was spent upon the matter of infringement of our patents by the Plant machines.

(Cross-examination postponed at request of counsel for petitioner.

987 JANUARY 8, 1914.

HAROLD G. DONHAM, witness for defendants.

I am thoroughly familiar with the riders which have been in use by the United Company and have been attached to its leases, as customers desired them, to cover various conditions which have arisen. In most instances I drew them myself. I have with me thirty-two different forms of riders which have been used.

As to the company's practice, where a rider in one instance was adopted and attached to a lease, with respect to offering the opportunities afforded by that rider to any other customer, we never adopted a rider for any particular case which was not at the time of its adoption made available for all similar cases.

In some instances the riders are typewritten and in some they are printed. Our practice was to have the rider typewritten when occasion arose to draw a rider to cover some particular condition, unless we foresaw that there would be a considerable demand for it. If we found there was an increasing demand for a typewritten rider we had it printed.

I think I have here types of all the different forms which we have used. These riders which I have are attached to original leases, but in discussing them I will refer the exhibits of leases for which they were respectively adopted.

Rider No. 1 (defendants' Exhibit 278, Record, p. —) is the form referred to in Mr. Winslow's testimony by which auxiliary machines of the Goodyear department were permitted to be used upon classes of footwear other than Goodyear. This was adapted to be attached to a lease similar to plaintiff's Exhibit 23 (Record, p. —) which is a lease of the Goodyear department covering auxiliary machines and upon its face restricting those auxiliary machines to use in connection with the Goodyear welter and the Goodyear stitcher in the manufacture of Goodyear shoes. This rider states that such auxiliary machines as are covered by that lease may be used in the manufacture of McKay sewed shoes at a special royalty.

When the rider is attached to a lease the blanks are filled in with the name of the auxiliary machine, the use to which
988 it is to be put in the particular case, etc.

Mr. CHOATE. This is a lease made to the Johnson-Bailey Shoe Company, of Millersburg, Pennsylvania, dated December 30, 1904, and the rider is dated February 8th, 1905.

The WITNESS. In respect to any rider adopted by the company it was absolutely the practice of the company that if anybody wanted a like accommodation he should have it. We never adopted a form of rider which was not made generally available. As soon as it was adopted it became a matter of routine. It was generally understood in the trade that such riders were available. There was no standing vote of the company and no provision in the printed lease which entitled another customer to that right, but it depended upon the regular practice of the company to make these things general, and in fact no distinction was made.

Rider No. 2 (defendants' Exhibit 279, Record, p. —) is a form of rider for Goodyear auxiliary machines providing that they may be used with the Goodyear welt and turn machine or upon welted footwear the outsoles of which are attached by hand, so-called handstitched welts. That rider was adapted for use with a lease similar to plaintiff's Exhibit 25 (Record, p. —). (Mr. Choate reads the rider attached to the original lease produced by the witness, a lease of Goodyear auxiliary machines to L. A. Stiles & Company, of Brooklyn, New York, dated October 4, 1911.)

Rider No. 3 (defendants' Exhibit 280, Record, p. —) is a similar form providing for the use of the Goodyear welt and turn shoe machine upon a similar class of shoes. That was adapted for use with a lease similar to plaintiff's Exhibit 24 (Record, p. —).

Rider No. 4 (defendants' Exhibit 281, Record, p. —) is another rider providing for the use of a principal Goodyear machine, in this case the Goodyear outsole rapid lockstitch machine, and also an auxiliary machine, in the manufacture of a special kind of shoe, neither a Goodyear welt nor a Goodyear turn. That was also for a form of lease similar to plaintiff's Exhibit 24.

989 Rider No. 5 (defendants' Exhibit 282, Record, p. —) is a form by which we consent to removal of machines from one factory to another. It is adapted to any lease and is given at the request of the lessee.

Rider No. 6 (defendants' Exhibit 283, Record, p. —) is a form permitting use of the Goodyear outsole stitching machine for repair work in resoling Goodyear shoes. That is adapted to be attached to the lease of plaintiff's Exhibit 23 (Record, p. —).

Rider No. 7 (defendants' Exhibit 284, Record, p. —) is a form permitting use of the Goodyear outsole stitching machine

upon hand sewed welts. This rider was used so frequently that we had it printed. It is applicable to the lease of plaintiff's Exhibit 24 (Record, p. —) and it is in effect the reverse of rider No. 3.

Rider No. 8 (defendants' Exhibit 285, Record, p. —) permits the use of the Goodyear outsole stitching machine in the manufacture of stitchdown shoes and it was adopted for use in connection with the lease of plaintiff's Exhibit 24. In a stitchdown shoe the upper, instead of being turned in for attachment to the sole, is turned outward and the stitching which attaches the sole goes through the outturned portion of the upper and the sole.

Rider No. 9 (defendants' Exhibit 286, Record, p. —) permits the use of the Goodyear outsole stitching machine for fairstitching metallic fastened and McKay sewed shoes, and that was also adapted to be attached to the lease of plaintiff's Exhibit 24. Such shoes are fairstitched to make them resemble a welt shoe. This rider prohibits the lessee from representing the shoe as a Goodyear welt, in accordance with our policy, in all cases where our Goodyear machines are permitted to be used upon shoes other than Goodyear welts or Goodyear turns, to protect our trade-mark rights and also to protect the public against shoes being misrepresented by providing that they shall not be marked or sold as Goodyear welt or Goodyear turns.

990 Rider No. 10 (defendants' Exhibit 287, Record, p. —) is a printed form for fairstitching similar to the typewritten form No. 9. There was found to be sufficient use for it so that it was printed.

Rider No. 11 (defendants' Exhibit 288, Record, p. —) is a form permitting use of the Goodyear outsole stitching machine in the manufacture of so-called "mock" welts which are described in the rider.

Rider No. 12 (defendants' Exhibit 289, Record, p. —) permits the use of a Goodyear auxiliary machine in connection with a Goodyear outsole stitching machine which has already been leased for use in making special kinds of shoes, such as the preceding riders apply to.

Riders Nos. 13, 14, 15, 16, 17 (respectively defendants' Exhibits 290, 291, 292, 293, 294, Record, p. —) were prepared after the United Company began January 1, 1905, putting out its Goodyear department machines without the requirement of an initial payment, to permit manufacturers having Goodyear welters and stitchers upon the forms of leases previously used, under which they had made initial payments, to change over to the new form of lease and thereby get back a portion of their in-

vestment in machines. The five forms differ in respect to the amount of the allowance, which varied according to the length of time that the lessee had had the machine, the condition in which it was returned and whether he returned his old machine and took a new one or simply retained the old machine and substituted the new form of lease. These forms were used in connection with the lease of plaintiff's Exhibit 24 (Record, p. —).

Rider No. 18 (defendants' Exhibit 295, Record, p. —) was prepared for the Goodyear department auxiliary lease of plaintiff's Exhibit 25 (Record, p. —), after the United Company on January 1, 1905, adopted the practice of offering the Goodyear department machines without initial payments, to permit lessees who had Goodyear department auxiliary machines on the 991 initial payment basis to have the benefit of the new leases. This rider made allowance in repect to the initial payment which such lessees had previously made.

After this change of policy in respect to leasing Goodyear machines was adopted, in January, 1905, the company allowed any lessee of the Goodyear department machines to change from the old initial payment forms of lease to the new form of lease.

It was recognized that it would be somewhat unfair to those lessees who had already invested their money in the initial payment form of lease to have their new competitors get their machines without involving that payment, so this was thought to be an equitable arrangement by which the older lessees could get the benefit of the noninitial payment method of putting out the machines.

Rider No. 19 (defendants' Exhibit 296, Record, p. —) is a printed form for use with the lease of plaintiff's Exhibit 15 (Record, p. —), providing for the use of the Consolidated hand method lasting machine for side lasting shoes which had been manufactured by the machines of the Goodyear system, and which were otherwise lasted by the No. 5 lasting machine, and without any additional royalty; that is, the lessee paid no royalty for the use of the hand method machine. This rider was attached to leases of the hand method machines already in the hands of the lessees.

Rider No. 20 (defendants' Exhibit 297, Record, p. —) is similar to No. 19, but was used when the lessee took the hand method machine from us at that time—that is, a lessee having the No. 5 lasting machine might apply to us for a hand method machine for side lasting, and rider No. 20 applies to that situ-

ation. That form was also used with the lease of plaintiff's Exhibit 15.

Rider No. 21 (defendants' Exhibit 298, Record, p. —) is a form also used with the lease of plaintiff's Exhibit 15, providing for the use of the hand method machine for lasting the heel portions of turn shoes at a royalty less than the regular royalty for lasting the entire shoe.

Rider No. 22 (defendants's Exhibit 299, Record, p. —) is a similar form for the same lease, providing for the lasting of the toe portions of turn shoes by the hand method machine. Both No. 21 and No. 22 were adapted to cases where the lessee wished to last only the toes or the heels of the shoes by machine, as the case might be.

Rider No. 23 (defendants' Exhibit 300, Record, p. —) is a form used in connection with the metallic department lease of plaintiff's Exhibit 30 (Rec., p. —).

992 From the very first we offered the metallic machines on optional forms of lease, one the restricted form without initial payment, and one the unrestricted form without initial payment, but involving the payment of ten per cent more for the fastening material used. Subsequently, instead of charging the extra ten per cent for the fastening material used, we offered an optional form for the metallic machines involving the payment of an initial payment, but with the elimination of any restriction as to use with other machines, and no excess charge for the fastening material.

Rider No. 24 (defendants' Exhibit 301, Rec., p. —) is a printed form comprising the substance of rider No. 23 and adapted to be attached to the same lease, plaintiff's Exhibit 30.

We later printed a form of lease with the substance of this rider incorporated in the lease, a copy of which is plaintiff's Exhibit 32 (Record, p. —). When that lease was adopted the use of this rider was discontinued.

Rider No. 25 (defendants' Exhibit 302, Rec., p. —) is a form which was attached to the metallic department lease of plaintiff's Exhibit 30, striking out the provision by which the lessee guaranteed that he would use a certain amount of fastening material each year and substituting a fixed monthly rental. This rider was adopted in order that metallic machines might be available to small manufacturers who desired them, but who realized that their use of the machine would not involve the buying of the guaranteed amount of fastening material.

Rider No. 26 (defendants' Exhibit 303, Rec., p. —) is a form adapted for use with the metallic department lease of plaintiff's Exhibit 30, permitting the use of the metallic machines upon hand-

sewed welts. That was adopted in view of the fact that the restricted form of metallic department lease limited the use of metallic machines, so far as used upon welt shoes, to shoes which had been welted and stitched by the United Company's machines.

Rider No. 27 (defendants' Exhibit 304, Record, p. —) was adapted to be attached to the heeling department lease of plaintiff's Exhibit 28 (Rec., p. —) and applies to the heel compressing machine, one of the auxiliary machines in our heeling department. The rider strikes out the so-called tying clause, and also strikes out the provision for royalty and the guarantee, substituting a flat yearly rental, and the term of the lease is one year. This rider was designed for use in the case of persons who wished to manufacture heels for sale to others. The amount of the rental depended upon the volume of the lessee's business. The lease authorized the lessee to use the machines for his requirements during one year, and if it was found that that was not an equitable arrangement, a new lease with a different rental was made for the ensuing year.

993 Rider No. 28 (defendants' Exhibit 305, Rec., p. —) is simply a form adapted for use in connection with any lease, acknowledging receipt by the United Company of leased machines; although the term of each lease is seventeen years, lessees are constantly returning machines either because they wish to substitute new machines or because they find they have machines in excess of their requirements. When lessees return some but not all of the machines covered by any particular lease, this rider is attached to that lease indicating that certain machines have been returned.

Rider No. 29 (defendants' Exhibit 306, Record, p. —) is adapted for use upon the pulling-over system lease of plaintiff's Exhibit 38 (Rec., p. —), and strikes out the limitation to use with machines of other departments. This rider was used when a lessee preferred to take his machines upon the initial payment basis. When this rider was adopted we had no printed initial payment lease, but in such cases we used the restricted lease and attached this rider striking out the restrictive clause. The rider does not on its face provide for initial payment, but that was taken care of by the order and was received by us when the lease was signed.

Rider No. 30 (defendants' Exhibit 307, Rec., p. —), also used on the pulling-over system lease of plaintiff's Exhibit 38, is a form of letter construing one of the provisions of that lease. Some lessee desired to have the matter perfectly clear that there

was nothing in that lease which precluded his doing some of his pulling-over by hand.

Rider No. 31 (defendants' Exhibit 308, Rec., p. —), adapted to the heeling department lease of plaintiff's Exhibit 28 (Rec., p. —), is similar to the pulling-over department rider of defendant's Exhibit 306, and was designed for use where the lessee preferred to make an initial payment and take heeling department machines on the unrestricted basis. That form was originally typewritten and rider No. 32 (defendants' Exhibit 309, Rec., p. —) is a printed form identical in substance with No. 31, except that No. 32 provides on its face for the initial payment. That form, like No. 31, was adapted for use with the heeling department lease of plaintiff's Exhibit 28.

A set of copies of original leases to which the riders were attached is defendant's Exhibit 310, a physical exhibit.

994 I would like to state that there are three instances there where the leases are not included. In the case of the lease for the metallic machines, substituting the initial payment for the restricted clause, there is already in the case a copy of the lease with the typewritten rider attached, but I was unable to locate any case where the printed rider had been attached, and it was shortly after superseded by the printed lease itself. In the case of the heeling machines, the typewritten rider and printed rider, there are no copies of the lease included. I was not able to locate any such lease.

995 Referring to plaintiff's Exhibit 161 (Record, p. —), I have made a study of this list presented by Mr. Harriman of the machines of the Haverhill Shoe Machinery Company which were being used by manufacturers who were also using some machines of the United Company, and it appears to me to be very inaccurate and misleading.

As to the respects in which it appears to be inaccurate and misleading, in the first place, Mr. Harriman has inserted under the heading of "Group 1" the names of ten manufacturers who are described as past users of machines of the Haverhill Shoe Machinery Company, and purports to show as to each the machines of the United Company which those shoe manufacturers were using in connection with the Haverhill machines. There is no one of the ten cases in which he correctly states the machines of the United Company which the manufacturer had and was using with the Haverhill machines, and especially he omits in every instance to point out that those lessees not only had the turn sewing machines of the United Company but other machines also.

In every instance in which the list purports to show the machines of the United Company used with the Haverhill machines the facts are incorrectly set forth. In every instance not only were the machines which Mr. Harriman indicates belonging to the United Company used, but additional machines as well, which Mr. Harriman has omitted. The list shows eight instances, I find on my memorandum, in which Haverhill turn sewing machines were installed, which are stated to have been used in connection with turn machines of the United Company. In only four instances are any other machines of the United Company besides the turn sewer mentioned. In no instance does the list show the fact that the lessee had the United Company's Goodyear auxiliary machines, or does it show the fact that the lessee had the United Company's general department machines which the lessee had elected to take upon the lease plan instead of buying outright.

The fact, in those respects, was that in each instance where the lessee had our turn machine he had also our auxiliary machines for use with it. If he discontinued our turn sewing machine and substituted the Haverhill machine for it and continued to use our auxiliaries with the Haverhill machine he was, of course, using our machinery without making any payment to us for it. In each of these instances the lessee also had more or less of our general department machines—in some cases a great deal, in some cases a small amount—which he had elected to take upon the lease form, restricted to use with our welt and turn sewing machines—instead of purchasing outright (in which case, of course, he would have had a right to use it in any way he wanted). And if he were using those general department machines with the Haverhill turn machines he was not only violating the conditions under which we had supplied the machines to him, but he was using our machines without proper compensa- to us. In every instance, also, the lessee had machines of other departments from the United Company which Mr. Harriman does not mention—machines of the lasting department in some cases, heeling machines, metallic machines, and in one case pulling-over machines.

996 As to the importance of my stating which manufacturers had which machines—perhaps I might give an illustration. The first case mentioned is that of Hilliard & Tabor, in which he sets forth that they installed one Haverhill turn sewer, one channeler, and one heeler. He then states that these machines were used in connection with "welt and turn" machines of the United Shoe Machinery Company. As a matter

of fact, Hilliard & Tabor, at the dates in question, had under lease from the United Company not only the company's "welt and turn" shoe machines, but had also the United Company's Goodyear auxiliary machines, Gem machines, pulling-over department machines, eyeletting machines—which they had elected to take upon the restricted form of lease instead of paying $100 and having them without restrictions—metallic machines, heel-attaching machines, heeling department auxiliary machines, lasting department machines, and general department machines on lease, and so on through all the other cases mentioned in group 1.

Group 2 Mr. Harriman has headed: "Present users of certain designated machines of Haverhill Shoe Machinery Company," and he has purported to show nine cases of concerns using turn sewing machines and (in some cases) heeling machines of the Haverhill Company. He has also purported to show what machines of the United Company each one of those manufacturers had. There again, although I haven't the detail in full here, the statement of the machines of the United Company is incomplete and misleading. Excepting in so far as lessees upon this list have their machines upon the independent form of lease, as to which I have not investigated, the situation would seem to be practically the same under group 2 as under group 1, with the exception that in the case of group 1 Mr. Harriman states that the Haverhill machines have been discontinued; in group 2 he does not so state.

As to the facts about group 3 in Mr. Harriman's list, Mr. Harriman has headed this group: "Present users of Haverhill Shoe Machinery Company's principal machines who use no principal machines of the United Shoe Machinery Company except instances especially mentioned." And he mentions two instances only of use of United Company's machines. One is the case of C. K. Fox, Incorporated, where Mr. Harriman states that in addition to the Haverhill Company's machines Mr. Fox used a slugger and a loose nailer of the United Shoe Machinery Company. It is a fact that Mr. Fox had our slugging and other machines of the metallic department upon the independent unrestricted form of lease. The other instance is the instance numbered 15, S. B. McNamara, where it is stated that in connection with the Haverhill Shoe Machinery Company's machines Mr. McNamara had heelers of the United Company. It is a fact Mr. McNamara had heeling machines under lease from the United Company under the unrestricted independent form of lease. I have not examined to determine the accuracy of the statements

in other respects for this reason, that if the lessee has none of the principal machines of the United Company upon the restricted form of lease, there is nothing to prevent him from doing just what Mr. Harriman says he is doing. He can not be hampered in putting in outside machines by restricted clauses in leases which he does not have.

Group 4 Mr. Harriman heads as "Users of auxiliary machines furnished by the Haverhill Shoe Machinery Company in connection with principal machines of the United Shoe Machinery Company." All I can say as to that is that I have not investigated to determine the accuracy of his statements, but, taking his statement as he has made it, I can say that there is nothing in

997 any of our leases of so-called principal machines which prevents either these lessees or any others from doing just what Mr. Harriman says these people here are doing—that is, continuing in these instances to use the Haverhill machines, or in other instances putting in the Haverhill auxiliary machines and using them with the United Company's other machines.

In group 5 Mr. Harriman purports to set forth instances under the heading of "Users of principal machines of Haverhill Shoe Machinery Company in connection with the principal machines of the United Shoes Machinery Company." This list purports to set forth three instances in which heeling machines of the Haverhill Shoe Machinery Company are installed for use in connection with turn machines of the United Company. Or it is so stated in two of the three instances. In the third instance I find that to be the fact, although it is not so stated by Mr. Harriman. The only thing I have to say about that is that the United Company has never put out a lease for its Goodyear turn machine either on the restricted or the unrestricted basis which would preclude the lessee of the United Company's machine from taking his heeling machines from the Haverhill Shoe Machinery Company or from any other manufacturer of heeling machines and using them in connection with the United Company's Goodyear machines.

Cross-examination:

The rider of defendants' Exhibit 278 (Record, p. —) was used by the Goodyear Company before the United Company was formed, and has been used by the United Company when there was occasion ever since up to the present time. I have no means of knowing how many of those riders were used by the United Company up to the time the bill was filed.

Defendants' Exhibits 279, 280, and 281 (Record, p. —) are riders permitting the use of Goodyear machines on special kinds

of footwear. They are all three in substantially the same form, simply adapted to a kind of footwear. In the regular printed Goodyear lease the auxiliary machines and the principal machines are limited to use upon Goodyear welts and Goodyear turns, but from time to time, from the very first, some manufacturer would want to use United Company's welting machine or stitching machine, with or without auxiliaries, or some of the auxiliaries without either the welter or the stitcher, in making a special kind of shoe.

In those cases a rider has been prepared applying to the kind of shoe which the manufacturer wished to make, and a special royalty was fixed for the machines which he took. Those riders might differ in different cases, because a man might desire to use the machines in different ways in different cases, but ever since I have been connected with the company we have always had the practice of making riders to meet such conditions.

998 The rider of defendants' Exhibit 282 (Record, p. —) simply permits the removal of a machine from one factory to another and we have always done that.

Defendants' Exhibit 283 (Record, p. —) was in use as early as August, 1907. I found a lease of that date carrying such a rider, and whether it was in use before or after that I do not know. If there was occasion for it it was available up to the time the bill was filed. That rider related to the use of the outsole stitching machine and an auxiliary machine for attaching new soles after the original sole had been worn out, that is, for repairing.

I have no information as to how many of these riders were put out and I do not know of any way to get it without going through the leases.

The rider of defendants' Exhibit 284 (Record, p. —) has been used in substantially that form from the first, and the Goodyear Company had a similar form.

The rider of defendants' Exhibit 285 (Record, p. —) has been used at all times when stitchdowns were made. That kind of shoe is made periodically.

The rider of defendants' Exhibit 286 (Record, p. —) permits the use of the machine for fairstitching, and that has been permitted ever since I recall. I find instances as early as 1900.

Defendants' Exhibit 287 (Record, p. —) is a printed duplicate of defendants' Exhibit 286, which was used in typewritten form until it was called for so frequently that we had it printed. I think it was printed about 1902 or 1903.

The mock welt rider of defendants' Exhibit 288 (Record, p. —) has been in use at least since 1902, and I have no doubt it was used before that time.

999 The rider of defendants' Exhibit 289 (Record, p. —) was adopted in 1905. Prior to that time the auxiliary machines had been on the same lease with the principal machines, but in 1905, when the lease without initial payment was adopted, the auxiliaries were put upon a separate lease, and this rider for auxiliary machines was adopted at that time.

The riders of defendants' Exhibits 290 to 295 (Record, pp. ——), inclusive, were adopted in January, 1905, and were adapted to the Goodyear lease without initial payment, which was adopted at that time.

The riders of defendants' Exhibits 296 and 297 (Record, p. —) were prepared in 1908 and used originally in typewritten form. They were printed in 1910.

The riders of defendants' Exhibits 298 and 299 were adopted in typewritten form in 1905 and were printed in 1906.

The rider of defendants' Exhibit 300, which is the one striking out the restrictive clauses in the metallic lease and providing for an initial payment, was adopted in September, 1910. Prior to that time we had always offered metallic machines upon two forms of lease, one with the restriction and one without. The restricted lease called for a smaller return to us in the way of royalty than the one without restriction. When this rider was attached to a lease the lessee paid us an initial payment when the machine was installed, and this rider was attached to the regular restrictive form of lease and struck out the restriction in that lease which limited the metallic machines to use with our Goodyear welting and stitching and our lasting machines.

The initial payment varied on different machines. A letter which I have, dated September 2, 1910, written to a manufacturer inquiring for such terms, quotes initial payments upon machines of various departments, including metallic machines. The terms named for the metallic machines were as follows: Staple fastening machine, initial payment $100; slugging machine, initial payment $250; loose nailing machine, initial

1000 payment $250; string nail tacking machine, initial payment $75; taper nail tacking machine, initial payment $75.

As to whether those amounts were the consideration for striking out the tying clauses, I would not put it that way. The lessee could have the metallic machines upon the restricted form of lease without any initial payment; he could have the machines upon the unrestricted form of lease, provided he cared

to pay us ten per cent more for the fastening material; he could have them upon the unrestricted form of lease, provided he paid us this initial payment in respect to each machine at the time they were installed. If he elected to take the last alternative, the rider which you have in your hand was attached to the restricted form of lease, and the lease was modified by that rider striking out the restrictive clauses. And in that case the ten per cent increase in the price of material did not apply. He bought his material at the same price as the man who had the restricted form of lease.

BROWN, J. He had his choice of three ways?

The WITNESS. He had his choice of three ways.

The rider of defendants' Exhibit 302 (Record, p. —) was a form making the leases available to small manufacturers, waiving the guaranty and substituting a small annual rental. I found such riders in use as early as 1902 and it has been used as occasion arose ever since.

Defendants' Exhibit 303 (Record, p. —) was simply a letter to some enquiring lessee who wished to have his lease interpreted in some respect. I don't imagine it was used in any case but one. The one which I brought in was a copy of an original lease with the rider attached to it I didn't look up to see whether it was used in other instances, but that letter was adopted as a form and if any one else made the same inquiry he got the same form of letter.

The rider of defendants' Exhibit 304 (Record, p. —) was used in a good many cases. I have found instances as early as 1903 and whether there were others before that I do not know.

Defendants' Exhibit 305 (Record, p. —) was a letter which really amounts to a rider and has always been used. When lessees desire to return part but not all of the machines under a particular lease, before the expiration of the lease, this rider is attached to the lease, indicating that those returned machines are eliminated from the lease.

1001 The rider of defendants' Exhibit 306 (Record, p. —) was adapted to the pulling over system lease and was similar to the rider for the metallic lease; that is, it struck out the restrictive clause and substituted initial payment. My recollection is that the initial payment was $750 for the pulling over machine, which is a very large heavy machine, and that the initial payments for the auxiliary machines were smaller amounts. $750 was not the consideration for striking out the restrictive clause; it was the initial payment if the lessee desired to take the machine upon the unrestricted form of lease.

Defendants' Exhibit 307 (Record, p. —) was simply a letter interpreting the lease for some lessee who had inquired.

The rider of defendants' Exhibit 308 (Record, p. —) was a form to be attached to the heeling department lease, changing it from a restricted lease to an unrestricted lease, involving initial payment and elimination of the so-called tying clauses. The initial payments were—for the McKay automatic heel loading and attaching machine, $400; trimming and randing machine, $150; heel trimming machine, $150. Those prices were quoted in September, 1910, to an enquiring lessee.

Defendants' Exhibit 309 (Record, p. —) is a printed form of rider corresponding to the typewritten form of defendants' Exhibit 308.

It was generally known among the trade that lease conditions would be given to permit these various things, although I don't suppose the trade knew how the terms would be given, whether by a form of lease or by a lease with modifications, and I don't suppose they concerned themselves as to that. We used riders simply as a matter of convenience and then if we found there was frequent use for it we printed a new lease, incorporating the rider in the lease.

1002 One illustration of the manner in which information that these lease conditions would be given was conveyed to the trade is that the form of royalty report which we have used ever since the United Company was formed contains blanks providing for fair-stitch work, mock-welt work, McKay-welt work, and so on, so that the return which every lessee of the Goodyear machines makes, who has a stitching machine, has such blanks on it. They make that sort of a return. That is one illustration. Of course, there are many others.

I think I have produced types of all the forms of rider which have been used.

With respect to the list put in by Mr. Harriman, I do not find in groups 1 or 2 any instance where Mr. Harriman stated that the manufacturer had our machines when he did not.

As to group 3, Mr. Harriman stated that the manufacturers enumerated were users of Haverhill Company machines, having no principal machines of the United Company excepting in the instances enumerated. Without looking it up I knew that in the two cases which he named in which United Company machines were used, the manufacturers did have our machines. I didn't investigate to see whether any others had our machines.

As to group 4, Mr. Harriman does not indicate anything with reference to the United Company's machines, and I did not look that up.

As to group 5, without having looked it up I am certain that both Witherell & Dobbin, J. J. Grover & Sons, and the Wingate Shoe Company have other machines of the United Company beside the turn machines mentioned, but as Mr. Harriman said that they were using turn machines, I did not consider it necessary to go further.

Mr. FOWLER. Mr. Brown has returned with this list that I called for the other day. Your Honors will remember that Mr. Winslow had filed a list showing the various machines that were in use at Mr. Brown's factory. Mr. Brown has returned and has designated the various sources from which he obtained those machines, and I don't care to ask him any further questions about it.

(Amplified list of machines used by J. Brown & Sons, Salem, Massachusetts, showing sources from which the machines were obtained is plaintiff's Exhibit 269, Record, p. —.)

1003 JANUARY 9, 1914.

WILLIAM R. SAMPSON, witness for defendants (recalled).

I am sales manager of the general department of the United Company, and have occupied that position for seven or eight years.

In connection with my work I have always made it a practice as far as possible to keep myself informed as to the state of the art as to the supply of shoe machinery on the market by others than the United Company. I inform myself as to what other persons are in the business and as to what they are offering in the way of machinery. That is a part of my trade knowledge and I always keep a file of catalogues that are issued, the different advertisements that appear, and general information that I obtain through reports, etc.

I have brought together my information with reference to the people who were advertising as producing shoe machinery and offering it to shoe manufacturers prior to December, 1911. This information has been compiled in two portfolios, of which the first comprises letters, catalogues, and advertisements of different machines that are offered for sale and advertised in this country by manufacturers of shoe machinery. There are 116 manufacturers represented in that portfolio, which is defendants' Exhibit 321 (a physical exhibit). That portfolio contains an index both according to the names of the manufacturers and according to the operations of the machines. All of these concerns are still engaged in business.

The second portfolio comprises catalogues of machines which I have not seen specifically advertised within a few years, but

which were generally known to be those of manufacturers who have these machines for sale, as a matter of general trade knowledge. I have collected there their catalogues which they give out to the trade. This portfolio is defendants' Exhibit 311 (a physical exhibit).

To inform myself further as to whether these people who were advertising were, in fact, ready to supply the machines which they advertised for sale or lease, I obtained letters from them saying that they were in a position to supply the machines. I personally applied, or had people apply personally, to them for the information. I have their own letters in response, quoting prices and giving their circulars and catalogues showing the machines upon which they quote. Their answers and some of their advertisements and catalogues are in the first portfolio. The letters are not all dated before December 11, 1911, but it is general knowledge that the machines were offered for sale before that time.

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I also produce a number of loose catalogues which I was not able to get into this portfolio. Defendants' Exhibit 312 (a physical exhibit) is a catalogue of Edward D. Spencer & Company. Defendants' Exhibit 313 (a physical exhibit) is a catalogue of J. D. Randall Company. Defendants' Exhibit 314 (a physical exhibit) is a catalogue of Edwin B. Stimpson & Son. Defendants' Exhibit 315 (a physical exhibit) is a catalogue of Metropolitan Sewing Machine Company. Defendants' Exhibit 316 (a physical exhibit) is a catalogue of C. V. Engstrom Company. Defendants' Exhibit 317 (a physical exhibit) is a catalogue of A. Johnson & Sons. Defendants' Exhibit 318 (a physical exhibit) is a catalogue of Moenus Shoe Machine Company. Defendants' Exhibit 319 (a physical exhibit) is a catalogue of Atlas-Worke Pohler & Co. Defendants' Exhibit 320 (a physical exhibit) is a catalogue of Standard Rotary Machine Company.

Mr. FOWLER. Of course, we want to interpose an objection, your honors, to all concerns mentioned in this list who are not engaged in producing or putting upon the market machines connected with fastening the sole to the shoe. This relates purely to the question of the monopoly. We are not insisting that there is a monopoly of any other line of machinery except that.

Mr. CHOATE. Do you waive any other claim?

Mr. FOWLER. So far as the actual monopoly is concerned, it is limited to the machines fastening the soles and the uppers together, and to the clicking machines and the eyeletting machines. Mr. Gregg says he wants to state it.

Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of shoes, and eyeletting machines and dieing-

out machines, otherwise known as clicking machines. Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines.

1005 BROWN, J. On what ground do you object to the introduction by the defendants of matters responsive to the allegations of the bill as it now stands?

Mr. FOWLER. We submit, may it please the court, that it is not responsive to the allegations of the bill as it now stands. It is true the bill alleges that it was their object to monopolize other lines of machinery than those, but the bill further restricts the actual monopoly to those particular lines that Mr. Gregg has mentioned, and we submit the fact that there are other concerns existing that put out machines of another character is not related to the allegations of the bill, as now set forth in the bill.

Mr. CHOATE. I don't think the bill does limit it in any way to the machines of which you have now spoken.

Mr. FOWLER. If the bill does not limit the actual monopoly to those machines as mentioned, why, we will agree to limit it at the present time.

DODGE, J. Page 73 certainly doesn't limit it that way.

Mr. GREGG. Seventy-nine, if your honor please.

Mr. FOWLER. I want to draw a distinction between the two matters alleged in the bill. The bill alleges that it was their original intention on the formation of the company to monopolize other lines of machinery, but when the bill comes to allege, make an allegation, with reference to the actual monopoly, it is limited to these particular machines. Your honors, I am sure, will find that that is the case, if you will examine the bill closely.

DODGE, J. Paragraph 8, on page 73, doesn't seem to look like that.

Mr. GREGG. Well, on page 79, section XI, of the bill reads:

"By virtue of the unlawful contracts and combinations above described defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for attaching the bottoms to the uppers of boots and shoes, and kindred and auxiliary machines; they have obligated scores of successful shoe machinery men to refrain from trade and commerce therein and have acquired a monopoly of interstate and foreign trade and commerce in shoe machinery, and have become so powerful that successful competition therein with them by any concern is practically impossible. The extent of their monopoly is indicated by the fact that they now control more than 98 per cent of the manufacture, sale, and lease of all the

essential and kindred and auxiliary machines and devices manufactured and used in the United States for attaching the bottoms to the uppers of boots and shoes; and they have it within their power," etc.

The paragraph on page 73, to which his honor, Judge Dodge, refers, is under the section of the bill relating to domination by defendants of foreign trade and commerce in shoe machinery, that is, between this country and foreign countries.

PUTNAM, J. Do you admit that you don't claim a monopoly in trade and commerce, either in the United States or foreign countries, of anything except the bottoming machinery and the eyeletting machinery?

Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines, and, as I stated, when I opened the case for the Government——

PUTNAM, J. One moment. Do you admit that that is all you claim?

1006 Mr. GREGG. Yes, sir. We make no contention——

PUTNAM, J. Can that go in the record?

Mr. GREGG. Yes, sir; I am perfectly willing for that to go in the record.

Mr. FOWLER. It has gone in the record, your honors, several times.

PUTNAM, J. Well, I don't know. In my opinion I said it was a very frank bill. So it was a very frank bill. At the same time they needed to determine the lines on which it is marked, but if you admit that and have it go in the record, why isn't that just as good as though you alleged distinctly in the bill that you claim that and nothing more? What would be the necessity of going into it?

Mr. GREGG. As Mr. Fowler has stated, perhaps the bill may be open to the construction that we allege an intent to monopolize more than those machines, and I think the proof all the way through will show that, taking into consideration the agreements that they entered into at the time they acquired competing concerns.

PUTNAM, J. Then that is a part of your case. If you allege in the bill that they intended to monopolize the whole thing, that gives color to the bill all through, doesn't it?

Mr. GREGG. Only to that extent; but when we charge the actual monopoly of what they have actually monopolized we charge that they have monopolized the machines that are designed and used for preparing and attaching the bottoms to the uppers of shoes.

PUTNAM, J. If I remember correctly, in the Swift case the intention was made the turning point of the case. If they had done these things, if you will still allege that they had done these things with the original intention to create a monopoly in other things, isn't that a case under the statute?

BROWN, J. Irrespective of the question of what had in fact been monopolized, that would give the Government a ground for decree on these general allegations.

Mr. FOWLER. Now, the bill sets out these facts, as I construe the bill, that, first, they intended to monopolize the whole business; in the second place, that they didn't monopolize the whole business, but in carrying out that intent they mopolized certain branches of the business.

BROWN, J. That is the trouble.

Mr. FOWLER. Yes.

DODGE, J. Haven't you alleged in your bill that everything they did hereinafter set forth was a step in carrying out the unlawful intent?

Mr. FOWLER. That is correct. Of course, your honor, we do that, but the bill expressly—that is, by necessary implication—admits that in these other lines of business there are a number of people at least engaging. That is what he is attempting to prove here; that is, he is introducing a list of a great many concerns engaged in those particular lines of business which the bill admits haven't been monopolized at all. Now, what additional bearing can that have, or how can that add anything to what is actually admitted and alleged in the bill itself?

BROWN, J. Mr. Gregg stands with Mr. Fowler on the original charges of the bill, a conspiracy to monopolize the entire shoe machinery business.

Mr. FOWLER. That is, when the organization was first made.

BROWN, J. Now, is it not open to the defendants to show what that was?

Mr. FOWLER. Certainly, your honor. As I understand, this particular evidence does not relate to what actually occurred.

BROWN, J. It certainly must be open to the defendants to show what was the field that they have made no attempts, and haven't tried to, in other lines at all. So long as you insist upon the original position, I don't think that the allegation that you charge success in any particular line is of any consequence.

1007 Mr. FOWLER. Of course, your honors, it can't have any material bearing upon the question of the actual monopoly, because we can see the actual monopoly only extends to a certain limited field.

Mr. CHOATE. State those fields, won't you?

BROWN, J. Even if it could be found that there is no actual monopoly as to bottoming machines, there is yet a case for decision.

Mr. FOWLER. That is correct, may it please the court, and the only questions for your honors to consider, it seems to me, is whether or not the simple fact that here were a number of other concerns engaged in other lines of business in 1911, or some time previous before 1911, can add anything to what is admitted in the bill with reference to those particular facts. That is, while the bill alleges that there was the original intent to monopolize when the organization was formed, yet it concedes there were a number of concerns in other lines of business than those particular lines, and those lines were not actually monopolized. Now, if these facts can add anything to what is alleged that are admitted in the bill on that feature, then it is admissible; but of course it could go only to the question of original intent; that would be the only thing.

PUTNAM, J. We haven't got foresight enough to go through all this. We have generally let counsel put in everything they wanted to, and I guess we had better let them go on the same way now.

Mr. FOWLER. I suppose, your honors, our exception may be noted?

PUTNAM, J. Certainly. Do you desire to state it any more fully?

Mr. FOWLER. No; I don't care to, your honor. Of course, there is a lot of testimony of the same kind put in by Mr. Winslow. I believe I raised some objection at that time that wasn't pressed.

(At request of counsel for petitioner the witness agrees to prepare a list of the manufacturers whose catalogs, letters, advertisements, and circulars relating to shoe machinery comprise defendants' Exhibits 311 to 321, inclusive, and of the machines which they manufacture.)

1008 JANUARY 9, 1914.

SIDNEY W. WINSLOW, witness for defendants (recalled).

Cross-examination resumed:

I was requested to ascertain if I could what per cent of welt shoes was lasted by machinery in 1898. I have ascertained that in 1899, 19,000,000 pairs of shoes were lasted on the Chase and Ideal machines, and I assume that those were all welt shoes. That is the nearest that it is possible for me to get. There is

nothing in our records to indicate whether the shoes are of one kind or another, except the kinds of machines that are used on them.

As to the number of welt shoes that were being manufactured at that time, I think it was 23,000,000. I have testified to that, and haven't the exact figure here. As to whether there is anything to indicate whether or not the Consolidated hand method lasting machine was being used in lasting welt shoes at that time, I haven't attempted to get the work done by each particular machine. It would be quite a task, although I might do it as regards the hand method machines.

I was asked to ascertain the style of the infringement cases which were pending against the Seaver Company and which had been brought by the Consolidated & McKay Company. Those suits were equity No. 1158, Consolidated & McKay Lasting Machine Company *v.* the Seaver Process Lasting Machine Company, and equity No. 1167, Same *v.* Same. They were both pending in the Circuit Court in the District of Massachusetts, and Fish, Richardson & Storrow were our counsel.

As to the request that I ascertain the number of Eppler machines which had been returned to our factory, the records of the factory do not show and I have not yet been able to get the information. I don't know whether I can get it. There 1009 have been so many things and so much work that I have followed along the lines of least resistance to get such facts as you asked for.

I have not yet ascertained the capital stock of the Eppler Welt Machine Company. I have tried to find records which would give that information, but have not yet found them. I do not know what has become of the records of the Eppler Company. I never saw them, and do not know whether they ever came into the possession of the United Company. I think the main office of the Eppler Company was in Boston or Brockton, but I do not know. Let me say that of course I was connected with the Lasting Machine Company and the McKay Company was located across the street, and the Goodyear Company's office was near ours. As soon as the companies were brought together of course my mind was entirely upon other matters than such things as the records of the Eppler Company, and then I went abroad in May or June, two or three months after the formation of our company, and did not return until late in the fall, and was out of touch with many of the details of the business until my return. I assume that the records of the Consolidated & McKay Company and the records of the Good-

year Company were turned over to the United Company, but I have never seen them. My work has not brought me in touch with them.

As to who prepared the papers and looked after the details of the purchase of the Eppler Company, beyond the fact that Mr. Endicott negotiated the sale, I can't give any information. It should be remembered that this transaction took place about fifteen years ago, and my mind has been occupied with the business of the three main companies and such companies as continued their existence, like the Canadian Company.

Fish, Richardson & Storrow were attorneys for the Eppler Company. I do not know whether they or whether Mr. Storrow had anything to do with the Eppler transaction. I think I had nothing whatever to do with the details of the transaction beyond what I have already stated in my previous testimony.

I have not yet undertaken to file a list showing what heeling and metallic machines were being made at the time of the consolidation of the several companies into the United Company other than those made by the McKay Shoe Machinery Company. I did not understand any such request was made of me. I will try to have that for you next week.

1010 I have prepared a statement giving the initial payments received on Goodyear department auxiliary machines in the calendar years 1903, 1904, 1905, and the amounts of the annual rentals for machines that were placed on the rental basis in the calendar year 1905, that being the first year that we started to put out auxiliary machines on the rental basis. Initial premiums received upon Goodyear department auxiliary machines in those years were as follows: 1903, $78,390; 1904, $92,510; 1905, $13,988.

In 1905 part of those machines were put out on the initial premium basis and part on the rental basis, the manufacturer exercising his choice. We adopted the rental basis late in 1904. In the year 1905 the annual rental upon the Goodyear department auxiliary machines which were put out upon that basis amounted to $15,371. If those machines had been put on an initial payment basis, we would have received $274,582 in initial payments. As requested, I will obtain the figures for 1911.

As requested, I have obtained information showing the amount received from repair parts and the profits on those parts. For the calendar year ending December 31, 1911, the total gross sales of parts for the Goodyear, heeling, lasting, pulling-over, and metallic department machines amounted to $690,367.34. The gross profit on those sales, without deduction for interest on capital invested or loss resulting from parts becoming obsolete, was

$276,146.94. The cost of the road service for that year, ending December 31, 1911, was $1,198,111.51. That road service expense includes generally the salaries and traveling expenses of roadmen, the proportion of the rents and expenses of the stations throughout the country, and telephone charges and expenses attributable in our accounts to road service alone. I can not give the details from memory. I think I went into those more in detail on direct examination, but I haven't the data with me. As requested, I have designated the sixteen auxiliary machines referred to in defendant's Exhibit 230 (supra, p. —). (The list supplied by Mr. Winslow is filed as plaintiff's Exhibit 270, Record, p. —.)

1011 I have ascertained that the list of 746 new concerns which have entered the shoe manufacturing business since 1900 was confined to manufacturers with whom our company did business. We did not attempt to ascertain how many concerns had entered business with whom we had not done business.

As requested, I have prepared the following lists:

(1) A list of the total number of lessees holding machines of the Goodyear, lasting, heeling, or metallic departments of the United Company on January 1, 1905, on independent, unrestricted leases. (This is plaintiff's Exhibit 271, Record, p. —.)

(2) A list of the total number of shoe manufacturers holding machines of the Goodyear, lasting, heeling, or metallic departments of the United Company on January 1, 1905, on independent, unrestricted leases. (This is plaintiff's Exhibit 272, Record, p. —.)

(3) A list of shoe manufacturers holding machines of the lasting, heeling, or metallic departments of the United Company on January 1, 1905, on independent, unrestricted leases. (This is plaintiff's Exhibit 273, Record, p. —.)

The total number of lessees on the first list holding Goodyear, lasting, heeling, and metallic department machines on independent, unrestricted leases is 1,085. The total number of shoe manufacturers on the second list holding machines of the Goodyear, lasting, heeling, and metallic departments on January 1, 1905, on independent, unrestricted leases is 943. The shoe manufacturers on the third list holding machines of the lasting, heeling, or metallic departments, on independent, unrestricted leases is 706. On January 1, 1905, the United Company was doing business with 1,026 shoe manufacturers, so that 943 of the 1,026 manufacturers had one or the other independent lease.

These lists give the names of the several individual concerns who held one or more machines under the independent leases on that particular date. These lists do not show the particular

machine or machines that were held by a lessee under this lease. That would be an almost interminable task. As to whether more or fewer manufacturers held machines under independent
1012 leases in December, 1911, I don't know, but I should assume that there would be fewer, because shoe manufacturers have appreciated the advantages of taking machines on restricted leases and have gradually adopted that plan. If it is a fact that more manufacturers are now holding restricted leases, that may be due to various conditions. For example, one manufacturer may go out of business and another manufacturer might enter business who would decide to take machines on the restricted leases. Again, a manufacturer would give up the use of machines, like the Chase machine, as in the case of C. H. Jones, of the Commonwealth Shoe and Leather Company, who had a great many Chase machines on unrestricted leases. He returned those machines and took the No. 5 lasting machine on restricted leases rather than take them on the unrestricted, independent leases.

In regard to the list of machines in the Brown factory, the United Company manufactures the Amazeen skiving machine and the Pluma skiving machine. I think the Pluma machine is a new machine that we have got out, but of that I can't be certain. If Jonathan Brown has those machines in his factory he did not necessarily get them from us, as we sell those machines and never lease them.

Our company now controls the Booth Manufacturing Company and we purchased the assets of George W. Emerson & Company. The Bresnahan Machine Company was a part of the property of Thomas G. Plant, and when we acquired its property it was not doing any commercial business.

(Examination of Mr. Winslow suspended, at request of counsel for defendants, to accommodate the next witness.)

1013 JANUARY 9, 1914.

ARTHUR AUGUSTUS SOUTH, witness for defendants.

I reside in Beverly, and I am superintendent of the Brophy Brothers Shoe Company, of Lynn. I have been in that position for eight years.

Every machine that enters our factory has to be approved by me; that is a part of my duties.

As to the testimony of Aleck Stone that he represents the Atlas Works, of Leipsic, Germany, and that in January or February, 1911, he called at the factory of Brophy Brothers in Lynn and interviewed the superintendent, and endeavored to place some of his machinery in our factory, and that he was told by the superintendent that they could not take any of his

machines, and that the superintendent said: "Mr. Stone, we can't even talk aloud about it, about talking with you at all about competition machines"—I did not make the statement. In the first place I don't know Mr. Stone and I never met the gentleman. I made no such statement.

There is no other person in our factory who has anything to do with meeting men who want to place machinery.

Cross-examination:

I never remember of meeting Mr. Stone in any way, shape, or manner.

1014 JANUARY 13, 1914.

NELSON W. HOWARD, witness for defendants, resumed.

Cross-examination:

There has been final judgment in each of the interferences between patent applications owned by the United Company and applications owned by Mr. Plant enumerated by me in defendants' Exhibit 272. These judgments were as follows, the ownership of the applications being indicated by "(United)" or "(Plant)":

Interference, No. 28,127, was decided in favor of Heys (Plant); No. 31,306 was decided in favor of Eppler (United); No. 31,422 was decided in favor of Heys (Plant); No. 31,657 was decided in favor of Phelan (Plant); No. 31,005 was decided in favor of Winkley (United); No. 29,382 was decided in favor of Ladd and Stiggins (United); No. 32,078 was decided in favor of Busell (United); No. 31,965 was decided in favor of Keats (United); No. 31,966 was decided in favor of Ashworth (United); No. 30,644 was decided in favor of Heys (Plant); Nos. 26,952 and 27,259 were decided in favor of Krewson (That application was owned by neither Plant nor the United when the interference was declared, but Plant had a license under the issues of the interference); No. 26,016 was decided in favor of Flynt (United); No. 26,018 was decided in favor of Hadaway (United); No. 31,802 was decided in favor of Brock (United); No. 31,347 was decided in favor of Phelan (Plant); No. 29,751 was decided in favor of Cook (whose application was owned by neither Plant nor the United); No. 31,525 was decided in favor of Hadaway (United); No. 31,854 was decided in favor of Hadaway (United); No. 28,636 was decided in favor of Perry (United); No. 32,056 was decided in favor of Stewart (Plant); No. 32,021 was decided in favor of Towle (United); No. 32,201 was decided in favor of Buckminster (United).

The only interference that I recall that was disposed of by stipulation was No. 32,056, McFeely v. Stewart. Stewart had

previously won another interference and was several years ahead of McFeely.

1015 I do not think that all of the interferences were decided before the Plant acquisition; those that were declared within two or three months before the acquisition very likely did not get to a final hearing before the date of the acquisition. It did not follow that after the acquisition we did not carry any further the interferences that had not been decided. It is sometimes necessary to carry through an interference in order to have the Patent Office settle the question of priority.

My recollection is that in the majority of those interferences which had not been decided before the Plant acquisition we carried the interference through. We certainly did in those cases where there were other parties, and there were quite a number of applications not owned by Plant or the United. I think enough progress had been made in the other cases so that it was advisable to carry them to final adjudication by the Patent Office.

Referring to defendants' Exhibit 274 (Rec., p. —) which sets forth my opinions as to infringements of Plant patents by machines of the United Company, the statement at the end of the discussion of Lockstitch Machine—model K, that it was necessary to change the construction of the machine to avoid infringement, applies only to the last patent mentioned in that discussion, No. 940,055.

1016 Referring to the discussion of lasting machine: No. 5, in defendants' Exhibit 274, and particularly to the paragraph regarding the British patent, some of the claims of which our machine infringed—at that time the United States patent had not been issued, but we felt sure that there was a United States application pending, and we made our changes in the light of what we found in that British patent. We expected to find the same claims in the United States patent when it issued later on as it did a year or two after that.

Referring to the last paragraph of the discussion of lasting machine: No. 5 in defendatns' Exhibit 274, we changed the construction of our experimental hold-down to avoid the infringement of claim 24 of patent No. 957,949, May 17, 1910, Glass, and claim 51 of patent No. 958,280, May 17, 1910, Plant; but it is not correct at all to state that at the time the Plant patents were acquired there was no infringement with respect to patents No. 957,949, Glass, and No. 958,280, Plant, because that last paragraph has to do with claim 24 only of patent No. 957,949 and of claim 51 only of patent No. 958,280. As ex-

plained in the earlier part of that discussion, the commercial machine infringed five other claims—13, 14, 15, 16, and 18—of patent No. 957,949, and it infringed five other claims—46, 47, 48, 50, and 52—of patent No. 958,280.

In the same discussion, in defendants' Exhibit 274, by my statement, in connection with the infringement of claims 46, 47, 48, and 50 of patent No. 958,280, that "the validity of those claims is questionable." I meant that I hoped it would be found that those claims were invalid if they were sued upon.

1017 As to our opportunities for determining whether or not Plant machines infringed our patents, prior to the time that we went through the Plant factory we got great assistance from the Plant patents and from the manner in which they were issued. The patents on the machines he was using issued to him and the patents on the inventions he was not using issued to the Manufacturers' Machine Company.

Q. Then all the suits you brought prior to the Plant acquisition were based on an examination of the patents only?

A. Oh, no. We learned from one source and another, operators who had been employed in the Plant factory who had drifted into our branch offices, and in that way we were able to learn which of the patents—we got enough information as to the general character of the machines so that we could tell which of the patents——

Q. In other words, the operatives of the Plant machines reported to your office on the operation of those machines?

A. Well, we got in touch with them. Our branch office would report to us that somebody would come in and give them this information about a certain machine, and by piecing together the information we got, that we got from all sources, we were able to satisfy ourselves as to the actual construction of the Plant machines.

None of the 18 infringement suits brought against Plant or the Thomas G. Plant Company had been litigated to a final conclusion. The first suits were brought in July, 1910.

I was aware before the Plant acquisition of the infringements by the Plant machines of practically all the United Company's patents which I have mentioned, except the Bresnahan sole molder infringement. I did not happen to see that machine in the Plant factory. I have stumbled on a few infringements since the acquisition.

I am not aware that Plant had notified the United Company that he intended to bring suits for infringement.

1018 Referring to defendants' Exhibit 275 (Rec., p. —), it is not claimed that United Company's machines were infringing any patents owned by the Goddu Company. The infringements there discussed were infringements by the Goddu Company machines of the United Company's patents. The proposed suits for infringements referred to in that exhibit had been prepared just before the formation of the United Company, and at that time the patents were owned by the McKay Metallic Fastening Association.

There was no infringement by the United Company of patents owned by Coupal and Gordon.

No suits had been brought by the United Company against Edwin T. Freeman for infringement of its patents by his machines. We claimed that there were such infringements. As a matter of fact, Freeman had not put out any machines at all.

As to all the concerns named in defandants' Exhibit 275, it is a fact that, except where infringement suits had been litigated to a final conclusion, my statements as to infringement are merely statements of my opinions.

There are also cases in which no infringements were claimed. Those are comprised in two groups; first, cases where a new field which we desired to enter—for example, the fast color eyelet field—was in our opinion completely dominated by patents owned by the acquired company; second, where the acquired company had patent rights which stood in the way of the development of machines which we had under way or which we were actually putting on the market. One of the companies in this group was the Seaver Lasting Machine Company, which, however, was also infringing our patents.

The suits under the discussion of M. V. Bresnahan & Co. in defendants' Exhibit 275, were not patent suits, and were cited simply to show that there was litigation pending. The first group were actions of replevin, and it is my impression that the suits were brought to recover certain machinery that had been in a fire and had been sold after they had been taken over by an insurance company. The facts are all of record in the report of the suits in 197 Massachusetts, 206.

1019 While I can not state the details of the four suits brought by the Bresnahan Company against the United Company, my impression is that they were for alleged malicious prosecution. These suits were pending at the time of the acquisition, and were disposed of by stipulation or by oral agreement after the acquisition.

Direct examination resumed:

As to the peculiarities of leather which must be provided for in the machinery which operates upon it, as distinguished from the machinery used on manufactured fabrics, leather is unique in that different portions of every skin or hide, frequently portions that are closely adjacent, differ in hardness, elasticity, and thickness, and these differences all have to be reckoned with throughout the successive steps in the manufacture of the shoe. For example, in cutting the different parts of the upper from a skin the cutter must be constantly examining the skin, selecting the best parts for the portion of the upper which will receive the most wear, and cutting from the other parts of the skin the portions of the upper which receive less wear or are not so prominent in the finished shoe. The necessity for that constant examination and the exercise of his best judgment all the time by the workman probably explains why the operation of cutting out uppers was always performed by hand until as late as 1908.

Again, in manipulating hide of sole leather, the operator must cut out soles from the best portion, carefully avoiding soft spots and brand marks, while insoles come from a different portion, not satisfactory for outsoles, and counters and top lifts and the other heel lifts are cut from the poorer portions.

Further, a shoe is unique in that it comprises so many different parts of leather. The upper of light skin, comprising a number of different parts, has within it a cloth lining. Between the lining and the upper is inserted a sole leather counter at the heel, and at the toe of most shoes a stiffening piece, known as the box toe, which prevents the toe from breaking down in wear.

1020 Then there are the insole and outsole, both of sole leather; in a welt shoe, the welt and also a filler of cork and cement between the sole and the outsole. The heel, if all leather, is composed either of whole pieces of leather, or if it is a pieced heel, many of its lifts will be composed of pieces of scrap leather pieced together to form complete lifts.

In my study of the development of machines for operating on leather to make shoes I have observed that only those machines have survived in connection with which the peculiarities of leather, of which I have just given illustrations, have been kept in mind.

1021 JANUARY 13, 1914.

SIDNEY W. WINSLOW, witness for defendants (resumed).

Direct examination resumed:

On cross-examination I was asked what, if any, new principal machines had been developed since 1899. Understanding the question to be limited to a machine which had been developed

to do work which had previously been done by hand, I referred only to the pulling-over machine. As I now think the question was intended, my answer should have included the clicking machine, the No. 5 lasting machine, the model M stitcher, and the model K welter. I include the last three machines because they are entirely new machines from the ground up; while they perform operations that were previously done by machines, they all embody new principles. There are also the new model B heeling machine and the new loose nailing machine, which have all been built upon new models. I mean by that that, although they accomplish in a general way the same result, it is an entirely new machine for accomplishing that result.

On cross-examination I was asked about the Continental laster. I have investigated that machine, and the best information I can get is that not over 20 of them were ever put out, and that those went out of use before the United Company was formed. As I stated, it was nothing but a tacking machine; the lasting was done by hand and the machine drove the tack.

When I stated on cross-examination that there were a vast number of metallic machines on the market before 1899, I understood the question to refer to the fact that a large number of metallic machines were in use, rather than many types of machines. As regards different kinds or makes of machines, there were not a great many in 1899 and practically all were being made by the McKay Company, which was putting out a large number of those machines.

My best information is that the McKay Company was putting out all the heel-attaching machines that were being put out in 1899, and that no other company had put out any heel-attaching machines for quite a number of years prior to 1899. When I speak of a heeling machine I mean a heel-attaching
1022 machine always. In speaking on my cross-examination of the Goddu Company having three or four types of machines I did not mean that they were in a position where they were marketing any machines. They were not in a position where they were marketing any machines, and were not in a position to market any machines. My information is that there never had been but one of their machines put out, and that that was only in use for some two or three weeks and had been returned to the company. On the question of their commercial condition, there were two of their machines that were not, and would not have become, commercial because of the feed that was used in them. They were all imitations of or along the same line as the machines that Goddu, senior, had invented for

the McKay Company. The machine which had gone out and been sent back was not as fast, and therefore not as commercially valuable as the machine which Goddu, senior, had invented for the McKay Company for doing that work.

As to the demand among shoe manufacturers for the McKay & Copeland laster and the Chase laster, about 1899 and just before and following 1899, the field for the McKay & Copeland has always been limited. I think there never have been over 300 of those machines in use at any time, and at present there are less than 200 in use. The Chase machine was substantially stationary in 1899; that is, for two or three years as many machines were returned as were put out. It would be fair to say that the use of that machine did not increase. Of course, at present there are very few of them in use.

In regard to the company's policy in offering or allowing manufacturers to take forms of leases alternative to those put in by the United States on those two kinds of machines, and particularly as to its policy in respect to the use of the old type of lease that had been used by the Consolidated & McKay Company before 1899, any manufacturer could have obtained those machines on the old types of leases. I think a careful examination of the development of the leases will show that some reduction, either in royalty or some beneficial change had been made in the new lease when any limitation was put into it.

A great many of those machines of these two types that were out remained out on the old form of lease. Of course the policy of the company in dealing with the manufacturers and talking with them was always to say to them, if one of these leases was discussed, that if they found any bother there, that we would be very glad to take up the matter with them and issue to them new leases under either the old terms or conditions that would make it equitable for them to use the machines.

1023 In regard to the vote passed by the company in reference to rebates of royalties on certain machines, that vote when passed was intended to apply to the Gem insole situation and nothing else, and was in practice applied to nothing except the Gem insole machines. Many machines had been put out by the Gem Insole Company before we acquired the machines, and it was necessary to have a general vote to apply to the machines already out on lease as well as those that might be put out. That was the purpose of the general vote, and no discrimination whatever was practiced between our customers in pursuance of that vote.

With reference to my testimony on cross-examination that in the calendar year 1911 our road service cost us $1,196,000 and our gross profits on parts were $276,000, without deducting anything for interest on capital and loss on obsolete parts, the capital tied up in the parts that are spread around through the agencies and at the home factory is a very large sum. I can not give the figures offhand. I should suppose that it would be in millions, but I would prefer to investigate it.

The loss from repair parts that are manufactured and are never used because they become obsolete runs into the thousands each year, and is a serious factor.

With respect to the $276,000 of gross profits, we are under annual expense which is not charged to our customers for putting the returned machines into condition for use. In 1911 the net cost of repairing the Goodyear, heeling, lasting, pulling over and and metallic machines at our factory, in excess of the charges to the customers, was $277,763.49; that is, $1,600 more than the entire profits on the parts.

I have not here a memorandum of the amount charged against customers that year for the repair of the returned machines, but that was about $70,000, and has been credited to this amount. That is, the total cost of repairing those machines was about $350,000, out of which we charged them about $70,000.

1024 I believe that all of our leases have a provision which, in terms, calls upon the customer to pay the expense of putting the machine in repair when it is returned on the termination of the lease. Accordingly, the company is entitled to recover from lessees the entire amount of that expense, but in fact the practice of the company is indicated by the comparative figures which I have just stated for the year 1911; that is, the expense to the company for putting such machines in repair was $350,000 and we charged up only $70,000 of it to our customers.

All of the company's lessees profit alike by this practice, which was arrived at in this way. The company establishes a figure for each machine which covers the cost of taking the machine down and setting it up again, and that figure is arrived at by doing the work in lots of 100. To that amount is added the price for broken parts and the parts which are missing when the machine comes back. Assuming that this fixed charge is $15, every manufacturer is charged that amount, plus the prices of the parts which have been taken from the machine or are actually broken when we receive the machine.

In applying this policy we don't discriminate between the customers, but treat them all alike, absolutely. Our customers

know that in this relaxation of the provisions of the leases about repairs they are all getting the same treatment, because the managers of our branch offices are all advised of the terms and conditions applying to each one of the machines, and the fact that base charges have been established is generally communicated by the agencies to all users of machines. When a machine is to be returned the agencies take up the question of cost with the manufacturer, so that the shoe manufacturer can in his own factory tell to a penny what the cost of repair would be before the machine is shipped from his factory. He knows the base charge and he knows what parts have been broken or have been taken from the machine, perhaps for use in another machine.

1025 This practice was adopted some six or eight years ago because both we and the manufacturers were unable to tell, prior to taking the machine down in our own factory, what the cost would be for putting a machine into condition to lease again; and many times a manufacturer who had returned a machine would complain of the cost of putting the machine in repair, because we had to put in new parts to replace partially worn parts, as the new lessee is entitled to have the machine in good condition. The loss to us represents the cost of putting in new parts to replace partially worn parts. The company has to put the machine in as good condition as a new one for the next lessee.

This practice has done away with all those complaints, and it was adopted for exactly that purpose, and under this method more equitable treatment to each lessee is unquestionably obtained than under the previous practice.

I have prepared a memorandum giving the names of the principal machines which are required in making different kinds of shoes, and showing the extent to which those machines are affected by any tying clauses in the restricted leases. The principal machines are in the Goodyear, lasting, heeling, and metallic departments, and I have here samples of the different kinds of shoes.

The principal machines used in manufacturing a Goodyear welt shoe, which if they are all obtained from the United Company may be under the restrictive form of lease limited to work done on the Goodyear welt sewing and outsole stitching machines, and more or less with each other, are the lasting machine, heel attaching machine, loose nailing machine and slugging machine. In the Goodyear welt shoe two seams are needed to attach the outersole, innersole, welt and upper together, and in

this respect it differs from all other shoes. In defendants' Exhibit 324, which is a Goodyear welt shoe, I have attached tags to the chainstitch seam, which unites the upper,
1026 welt and insole, and to the lockstitch seam, which fastens the welt and outsole together. The chainstitch is made by the welt sewing machine, and the lockstitch is made by the outsole lockstitch machine.

The wearing qualities of the welt shoe and its integrity are dependent upon the combined result of the welt sewing machine and the outsole stitching machine. In that respect the welt shoe differs from all other kinds of shoes, which require only one fastening machine.

Accordingly in making the welt shoe the only principal machines affected by the tying clauses in the restricted leases are the lasting machines, the heel attaching machines, and the two metallic department machines—the loose nailing machine and the slugging machine.

Defendants' Exhibit 325 is a turn shoe after it has been sewed and before it has been turned, and defendants' Exhibit 326 is a turn shoe after it has been sewed and turned. No innersole is used in this shoe, and the chainstitch around the outside of the upper is the fastening which attaches the upper to the sole. After the upper is sewed the last is pulled out and the operator turns the shoe right side out on the turning machine, a Goodyear auxiliary.

The principal machines affected by the tying clauses which are required for making the turn shoe are the heel attaching machine in the heeling department, and sometimes the slugging machine in the metallic department, although that machine is not used on the majority of turn shoes. A very few turn shoes are lasted, or even partially lasted, by machinery.

The principal machines used in manufacturing a McKay shoe, which, if all obtained from the United Company, may be under the restrictive form of lease, limited more or less to work done by each other, are lasting machine of the lasting department sole tacking machine, slugging machine and sometimes the loose nailing machine of the metallic department, and heel attaching machine of the heeling department. The loose
1027 nailing machine is not necessary. The McKay shoe is shown in defendants' Exhibit 327 and I have attached a tag to the seam. The loose nailing machine was not used in the manufacture of this shoe. The sole is attached to the innersole and upper by the McKay sewing machine, which became public long before the formation of the United Company, and which is made by a number of manufacturers.

The principal machines used in manufacturing a standard screwed shoe, which, if all obtained from the United Company, may be under the restricted form of lease, limited more or less to work done by each other, are lasting machine from the lasting department, sole tacking machine, rapid standard screw machine and slugging machine from the metallic department, and heel attaching machine from the heeling department. Defendants' Exhibit 328 is a standard screwed shoe showing the operation of these machines. In making a standard screwed shoe the machine screws a continuous wire through the outersole and innersole and after that wire has gone through it is severed by the machine, which then feeds the work along for another screw to be inserted.

Defendants' Exhibit 329 is a loose nailed shoe in which the sole is fastened to the innersole and upper by separate nails. It differs from the standard screwed shoe in that the nail is headed and its point is clinched on the inside of the shoe.

The principal machines used in manufacturing a loose nailed shoe, which if all obtained from the United Company may be under the restrictive form of lease, limited more or less to work done by each other, are lasting machine from the lasting department, sole tacking machine, loose nailing machine and slugging machine from the matallic department, and heel attaching machine from the heeling department.

A pegged shoe is illustrated in defendants' Exhibit 330. All the principal machines used in manufacturing a pegged shoe, which if all obtained from the United Company may be under the restrictive form of lease, limited more or less to work done by each other, are lasting machine from the lasting department, sole tacking machine, pegging machine and slugging machine from the metallic department, and heel attaching machine from the heeling department.

1028 The McKay, the Goodyear, and the turn shoes are made by distinct methods of construction, and there is distinct machinery for each one. In the loose nailed, standard screwed and pegged shoes the location of the fastening which attaches the outersole, innersole and upper together is the same, but there is distinct machinery for making each of those shoes.

When I testified on cross-examination that the reason for the use of the tying clauses was not to cause more of our machines to be used and to make more people use them, but that the real reason was to increase the productivity of our machines, I meant that the clauses were introduced to increase the productivity of the principal machines and by increasing that productivity

to reduce the number of machines required to do the work, and thereby reduce the cost to the company of the upkeep and service in connection with the machines, and at the same time increase the earnings of each machine.

By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used.

This tendency in the operation of the tying clauses is clearly shown by the comparison in the exhibits showing the efficiency of the machines in 1911 over the machines in the year 1900. A relatively smaller number of machines are producing a larger number of shoes, resulting in less necessary investment in machines to produce a given product and less relative expense to maintain those machines in condition to operate continuously, in the upkeep of those machines, and in the number of operators which must be instructed. The productive efficiency and quality of work done by any line of machines is only equal to that of the least efficient machine in the line.

1029 It is the fact that each of the principal machines of the United Company have been developed and improved with special reference to its operation upon work which has been or is to be done by other principal machines of the company; and also new and improved machines have been developed to cooperate with them and increase the efficiency of the previously existing principal machines.

With reference to this question of productivity, it would not be a business possibility for the company, without the requirement of initial premiums, to lease its machines on the terms of the restricted leases without the restrictions in those leases.

I was asked on cross-examination to investigate and state what the company obtained from rentals of auxiliary machines in the year 1911. On January 1, 1911, we charged to lessees of the Goodyear department auxiliary machines $83,420.22 for

rental on those machines for the full calendar year. That was not all received in cash, because during the calendar year 1911 we made allowances for the return of Goodyear department machines to the extent of $31,173, which was applied in the payment of annual rentals; that is, when a man had a machine on an initial premium lease and returned it and took a similar machine on the rental form of lease, we credited him with part of the initial premium he had paid before against the rentals. This was in order to place all of our lessees who had machines on that form of lease on exactly the same terms.

That rental was produced by about 9,000 machines, and if those machines had been put out on the same initial premium that was charged before we changed and offered these wholesale terms, the initial premiums received on them would have been $1,489,923. If the $83,000 charged for rentals had all been received in cash the amount would have been about five and a half per cent of the $1,489,923, which would have been received if initial premiums had been charged. (The initial premiums paid were for the whole life of the machine.)

With reference to my testimony on cross-examination in regard to the purchase of the Stanley plant, there was nothing about the Stanley machine shop which was peculiarly adapted

1030 for manufacturing shoe machinery. In fact, that shop was largely used in manufacturing gasoline engines and bottling machinery, and such things. The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery. The only other things needed are the special tools and jigs which are made by any manufacturer of a particular machine. In other words, by buying a particular machine shop, such as Stanley's, we did not acquire any particular control of existing facilities for making shoe machinery.

The McKay sewing machines which Stanley manufactured for us under the agreement annexed to Exhibit G of plaintiff's Exhibit 132 were sold or leased by us as the manufacturer desired, and we continued to sell McKay sewing machines up to the time of the bringing of this suit, and do now. At the beginning of this suit McKay sewing machines could be obtained from the following concerns, some of whom were manufacturing and supplying McKay sewing machines, and some of whom were dealers in shoe machinery.

American Worsted Machinery Company, of Abington, Massachusetts; Boylston Manufacturing Company, Boston, Massa-

chusetts; Donnolley Machine Company, Brockton, Massachusetts; J. S. Holt & Company, Boston, Massachusetts; Hamel Shoe Machinery Company, Lynn, Massachusetts; Haverhill Supply Company, Haverhill, Massachusetts; Haverhill Shoe Machinery Company, Haverhill, Massachusetts; Louis G. Freeman, Cincinnati, Ohio; Lynn Supply Company, Lynn, Massachusetts; Manufacturers' Supplies Company, St. Louis, Missouri; J. H. Nangle, Lynn, Massachusetts; R. H. Long Shoe Machinery Company, South Framingham, Massachusetts; Walter Pearson, Whitman, Massachusetts; J. H. White, Haverhill, Massachusetts; E. E. Spencer & Company, New York, New York; Rebuilt Shoe Machinery Company, Rochester, New York; Shawmut Machinery Company, Boston, Massachusetts; Atlas-Werke-Kohler & Company, Leipsic, Germany; Gimson & Company, Leicester, England; A. Johnson & Sons, Paris, France; Moenus Machine Works, Frankfurt, Germany; Timson-Bullock & Barker, Kettering, England; Standard Engineering Company, Leicester, England; Standard Rotary Machine Company, Rushton and Northampton, England; Nollesche Works, Weinsenfels, Germany; Ward & Gent, Northampton, England.

1031 Some of the companies which I have named, like the Hamel Company, Haverhill Shoe Machinery Company, and the R. H. Long Company, are larger than any shoe machinery companies doing business in the United States or anywhere else in 1898, except the three companies which came into the United Company; and they are better fitted to build machines and do build to-day a larger number of different kinds of machines than any concern in existence in 1899, including the three companies that went into the United Company. It is generally true of shoe machinery manufacturers doing business just prior to the bringing of this suit, as compared with the outside manufacturers doing business in 1899, that they are larger and are capable of furnishing a more complete equipment to factories.

The floor area of the shoe factory of the Thomas G. Plant Company in Jamaica Plain was 502,491 square feet.

With reference to certain questions asked me on cross-examination with reference to the so-called sole-leather room and the so-called fitting room, according to general usage certain names are given by shoe manufacturers to parts of their factories in which certain work is done. These are the cutting room, where the uppers and the linings are cut out; the stitching or fitting room, where the uppers, linings, and trimmings are assembled and stitched together; the making room, sometimes called the

bottoming room; and the sole-leather room. The lasting room, the finishing room, and the bottoming room referred to in some of defendants' exhibits and in some of defendants' testimony are substantially all one room. I do not know of any factories where the lasting room would be by itself. The principal machines which the United Company puts out for welting, stitching, lasting, pulling over, heeling, and metallic fastening are as a matter of practice all used in the same room of the factory, the making or bottoming room; they are grouped close together and the shoes pass through successive operations from one machine to another.

(Testimony of Mr. Winslow is suspended, at request of defendants' counsel, to accommodate the next witness.)

1032 JANUARY 13, 1914.

WILLIAM BARBOUR, witness for defendants.

I live in New Jersey and New York and I am engaged in linen thread manufacture in New York. I am president of the Linen Thread Company and a director of the United Company.

Q. A man by the name of James N. Darrah testified in behalf of the United States and said that in April, 1900, he was introduced to you by John R. dosPassos and that a conversation took place in Mr. dosPassos' private office at 20 Broad Street, in which you said as follows:

"I have a very large investment in the stock of the United Shoe Machinery Company and I don't propose to have that investment jeopardized—jeopardized by competition." And turning to Darrah you said:

"You are a competing company. You haven't got anything, anyway."

You asked him if his stock was for sale and he said he didn't think it was. You said that you thought he was making a big mistake if he didn't sell out. Then you said:

"We always try to buy out competitors, and if we can't buy them out we force them out. If you don't do what we want you to, we will crush you."

Now what do you say about that? Did you have any such conversation or make any such statements?

A. Never. I met the man, but I never made such a statement at all.

There was no threat or intimidation at all by language used by me in my conversation with him. There was no suggestion that I regarded him as a competitor who would jeopardize our interests, or that if he did not sell out we would force him out.

Cross-examination:

My recollection is that I first saw Mr. Darrah at the Lawyers' Club and Mr. dosPassos introduced me to him. I don't remember ever having been at dosPassos' office.

It was 13 or 14 years ago that I saw Mr. Darrah, since the United Company was formed. I may have seen him three or four times. He came to my office once several years afterwards. I think then he had some patent that he wanted to sell, and I suggested that he come over and see Mr. Howe.

I had some conversation with Darrah about the Standard Shoe Machinery Company, but it was more with dosPassos. I knew they were forming such a company. Darrah was present,

1033

and my memory is that it was at the Lawyers' Club, but it may have been at dosPassos' office. It is possible that I saw Darrah there. I think I saw him with dosPassos, and once or twice he came to my office.

In his first conversation with me the impression that Darrah conveyed was that he wanted to sell his company, but just what he said I don't remember. I recall that I suggested that he come over and see Mr. Howe and Mr. Winslow.

I didn't make any statement to Darrah that his concern was in competition with the United Company, and they certainly were not. I may possibly have said that I was largely interested in the United Company. I did not say anything to him about driving out competitors if they did not sell out. I never mentioned anything of the kind.

As to my purpose in telling him to come over and see Mr. Winslow or Mr. Howe, I would not have attempted to make any bargain with him if he had anything that we wanted to buy. It was natural to refer him to our president and to Mr. Howe, who was our patent attorney at that time.

I did not make Darrah any offer at all for his company. It is not a fact that I offered him $600,000 for the company. I never made him any offer at all of any kind.

Darrah came to me later on, several years afterwards, in regard to some patent, and I have those two meetings in my mind, but I may have seen him twice at that time. I don't know that I would know the man if I saw him now.

We must have discussed the Standard Shoe Machinery Company each time I had a conversation with him, because that was the reason for the call. I could not state when I saw Mr. Darrah last. It was a great many years ago.

I read Mr. Darrah's testimony after he testified in this suit, and I made a publication denying that testimony. He has sued me for $25,000 for libel.

Direct examination resumed:

I saw some report of Darrah's testimony in the newspapers i New York, and I promptly published a denial. He sued n for libel.

1034 JANUARY 13, 1914.

SIDNEY W. WINSLOW, witness for defendants, r sumed.

Direct examination resumed:

I was made aware before the Plant purchase of the extent t which there was confusion or conflict in the patent situations our company and of Thomas G. Plant. Mr. Howard notified m from time to time as interferences were declared by the Pater Office between applications of Mr. Plant and applications of the United Company, and as his investigations led him t decide that there were patent complications between Mr. Plan and the United Company.

As the result of those communications and my conferenc with Mr. Howard I discussed many of the questions with M Fish, especially regarding the patents, and conferred with M Salinger, of his firm, regarding the interferences. I also discusse these matters with Mr. Howe.

I authorized bringing the suits that were brought upon th advice and with the approval of Mr. Fish.

The confusion and conflict in the patent situation of my ow company and of Mr. Plant, the chaos which might result fro conflicting claims and constant litigation, was a substantial co sideration in my mind, affecting my negotiations or willingne to negotiate with Mr. Plant, and when Mr. Plant offered to me th patents at a price which to my mind was less than their value t the art of shoe manufacturing when combined with our machine it might be said to be a controlling factor.

Q. Now, have you looked up to ascertain how many of welte and stitchers with the Plant improvements have been out pu to the trade?

A. I have.

Mr. FOWLER. Your honors, I want to interpose the sam objection there. That is testimony after the filing of the bill.

BROWN, J. I suppose on the question of the value of th Plant acquisition.

Mr. CHOATE. And on the question of the good faith wit which we bought them and the good faith with which we a using them.

PUTNAM, J. It may be admitted for that purpose, Mr. Choat Keep it down as close as you can.

Mr. FOWLER. Your honors, of course I want to reserve an exception.

The WITNESS. On January 1st, 1914, there were in the hands of our lessees under lease 1,024 welt and turn machines, model K, embodying the Plant inventions. There were on the same date 1,158 rapid stitcher machines, model M, embodying the Plant inventions.

1035 In regard to defendants' Exhibit 221 (Rec., p. —), a list of machinery, findings, and supply dealers advertising in the trade papers in New England about the time of the organization of the United Company which were not acquired by the United Company, I was asked on cross-examination if I could state how many of those were still in business. I have looked this up and I am now able to state which of those are now engaged in business. On a copy of that list I have written "in business" or "not in business" after the name of each concern, excepting those which I testified I knew were in business. The list which I have so marked is defendants' Exhibit 221A (Rec., p. —).

On cross-examination I was requested to supply a list of the 16 Goodyear auxiliary machines referred to in defendants' Exhibit 230 (Rec., p. —) and to state the rental on each machine. This information is contained in defendants' Exhibit 230A (Rec., p. —), and I have also indicated the initial premium which was required on each auxiliary machine before the change was made from initial payments to the annual rental and the restrictive clause.

I have had prepared a list of the concerns, other than the United Company, who were in business at various times from 1899 down to the beginning of this suit and who supplied or offered to supply welt and turn machines and outsole-stitching machines. That list shows the periods during which the various concerns were engaged in business. I don't mean to say that these were in business all the time from 1899, but at some time from 1899 each of them was doing that business.

1036 Q. This memorandum purports to show the period during which those various concerns were in the market supplying, as I have said. Can you, Mr. Winslow, run off just the names of those without stopping now to give how much of the time the various concerns were engaged in the business?

A. Yes, sir.

Mr. FOWLER. I wish you would also state where they were located, if you can.

A. Puritan Machine Company, I think that is the technical name; at any rate, that is in Boston.

Q. And name the machine.

A. Puritan stitching machine for fair stitching, and Nat
stitching machine for the same work, and McKay Sewing ma
Mills turn-shoe machine, Mills Turn Sewing Machine Com
I think that company was located in Philadelphia. The mac
were manufactured for the Mills Sewing Machine Compan
Stanley at that time. Loop-lock turn machine, Loop-Lock Ma
Company, 100 Purchase Street, Boston, Massachusetts. C
pion outsole-stitching machine, Champion Shoe Machinery
pany, St. Louis, Missouri.

Q. Let me interrupt you just a moment. Sometimes a
chine is spoken of as the lock-stitch machine, sometimes as
out sole stitcher.

A. Wherever the word "lock-stitch" is used in connection
that class of machines which we are discussing it means a mac
which will make the lock-stitch used in the manufacture
welt shoe.

Q. May we regard for the purposes of this case a lock-st
machine and an outsole stitcher as machines which are inter
for doing the same work?

A. They are. May I just make one statement, that I bel
that to be absolutely true, although there may have been in
duced somewhere in the evidence some few words regardi
welt-sewing machine which did employ a lock-stitch, bu
think not.

1037 Q. Now, continue with your list, please.

A. The name of this list is "Welt and turn set of
chines, including auxiliary machines of the Duplessis Shoe
chinery Company, Haverhill, Mass." Heys turn shoe mach
manufactured by the Bresnahan Shoe Machinery Company
Lynn, Massachusetts.

Out-sole stitching machine, Union Lockstitch Machine C
pany, Boston, Massachusetts.

Welt-sewing machines and out-sole stitching machines, La
Machines Company, 100 Covert Street, Brooklyn, New Y
afterwards at 291 Broadway.

Fox turn shoe-sewing machine, Haverhill Channeling Mac
Company, 601 Kimball Building, Boston, Massachusetts.

Welt-sewing and turn sets, by the Hamel Shoe Machinery C
pany, Haverhill, Massachusetts. I understand that they offe
full lines of machines.

Welt-sewing machines and out-sole stitching machines
certain auxiliary machines, by R. H. Long Shoe Machinery C
pany, South Framingham, Massachusetts.

Welt set of machinery, Universal Shoe Machinery Company, St. Louis, Missouri.

Nollesche Works, Weisenfels, Germany; A. H. Johnson, Leicester, England, and Gimson Company, Leicester, England, welt and turn machinery, including auxiliaries.

John Callahan, Lynn, Massachusetts, advertised a welt machine.

A. H. Johnson, Leicester, England, complete welting plant.

Standard Engineering Company, Leicester, England, high-speed welt sewers with all auxiliary machines.

Standard Rotary Machine Company, of England, complete set of machines.

Nollesche Works, of Weisenfels, Germany, shoe machinery for all departments of manufacture.

Moenus Machine Works, complete outfits.

Gimson Company, Leicester, England, machines for every operation.

1038 Universal Shoe Machinery Company (Limited), for high-grade welting.

Boylston Manufacturing Company, of Boston, Massachusetts, welt set of machines.

(List showing persons or concerns in the market supplying or offering to supply welt and turn machines and out-sole stitching machines, other than the United Company, from 1899 down to the time of the filing of the bill is marked "Defendants' Exhibit 331," Rec., p. —.)

1039 I was asked on cross-examination regarding other parties manufacturing auxiliary machines but could not remember them. I have prepared a list of the persons or concerns, other than the United Company, which have been making or offering to the trade auxiliary machines for the manufacture of welt shoes. This is defendants' Exhibit 332 (Record, p. —).

As to the testimony of Mr. Jackson Johnson, Mr. Emanuel Selz, Mr. Frank Rand, and possibly other manufacturers from St. Louis, that they were not at that time aware of the fact that there was any alternative form of lease which they could take other than the lease with the restrictive clause, about six months prior to the time for their testifying I had written, or had caused to be written, letters to all those concerns advising them or notifying them of the existence of the alternative form of lease. Defendants' Exhibit 333 is a copy of that letter.

DEFENDANTS' EXHIBIT 333.

JANUARY 3, 1912.

GENTLEMEN. We are in receipt of orders from you for one or more machines of our Goodyear, pulling-over, lasting, metallic, or heeling departments.

In ordering these machines you have requested the company to lease them to you under the form of lease "where the lessee does not pay in advance a 'lease premium.' "

We assume that you are fully acquainted with the fact that machines in any of these departments may be had from this company under "initial payment" department form of leases, which leases do not contain those clauses which restrict the use of machines of one department to work that has been done on machines of one, or more, of the other departments. We shall be very glad to furnish you the machines which you have ordered under the "initial payment" form of lease if you prefer. We call this matter to your attention at the present time in order to avoid the possibility of any question of fact regarding this subject in the future.

Kindly notify us promptly of your decision, and with kindest regards, I remain,

Very truly, yours,

GENERAL MANAGER.

The WITNESS. That letter was sent in the ordinary course of business. Those concerns had quite a number of machines on order. This was the January following the conference in May, 1911, at my office, and we were again calling the facts to their attention.

1040 The average royalty paid by a shoe manufacturer for the use of all machines furnished by the United Company for the manufacture of all types and grades of shoes is less than two and two-third cents per pair.

I should like to make a statement, if I might, as to the fact that the reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine.

Prior to the formation of the United Company there was a constant dispute between the different companies which made up the United Company as to who was responsible for a poor piece of work. As an illustration, which could be easily understood even by one not familiar with the manufacture of shoes, the very next operation from the lasting is the welt sewing. The welt-sewing machine operator would constantly lay the blame for poor work upon the lasting operator—the operator upon the lasting machine. The lasting machine operator would constantly blame the operator upon the welt-sewing machine.

Both those reasons have to do with the use of our tying clauses for the greatest and most successful production of our machines.

As to the alleged conversation which Mr. R. H. Long testified he had had with a Mr. Hutchinson, a man in our employ, Mr. Hutchinson is not living and has not been for some time.

Cross-examination resumed:

As to whether I offer the fact that machines belonging to different companies in a measure interfere with each other in the work as a justification for putting the restrictive clauses in the leases, I offer it as a business reason for the limitation that is put upon the use of the machines when the restrictive clause is contained in the lease—as one of the reasons which emphasizes the productive efficiency of the machines working together. As to whether, if another manufacturer had just as good a machine as ours to perform one of those operations, the work
1041 would be interfered with materially—I am quite sure that it would. I think that same condition does not exist in every industry where different machines are required to do successive pieces of work. I should be very glad to give you the reason if you like. It is not true that it necessarily applies in the making of cloth or anything of that kind as much as in the case of the shoe industry. The fact is that there is no concern making these machines in the world that I know of which furnishes the service to keep the machines in proper adjustment and to attend to them as soon as they break down. Our company is unique in that particular. More than that, our machines through a series of years have been developed with particular reference to the product of our own machines. I think that there is no question that that product is of the highest type.

As to whether I advance that as a reason why our company should have the entire business, we do not claim anything of that sort. My personal belief is that the best kind of competition for the public, for the manufacturers, and for the shoe machinery dealers, is to have various concerns manufacturing

the few necessary principal machines and have the manufacturer equip his factory by either one set of machines or another. I believe that will give the best service, the best conditions for low cost of production and the best development of the art of shoe making.

It is not a fact that no other concern engaged in the manufacture of shoe machinery owns a sufficient number of machines and a sufficient number of different kinds of machines to justify keeping up a repair service. The Duplessis Company, the Hamel Company, or R. H. Long, in this country, are perfectly capable of furnishing a set of machines to make each of the different types of shoes, and, if they choose, of furnishing a service with them; and also I understand the Haverhill Company, with the exception of an outsole stitcher, but it would be very easy for them to obtain and put out a complete line.

1042 I know about the businesses of these concerns in a general way, but my opinion as to the amount of their business is based upon the evidence introduced in this suit.

As to my testimony regarding the principal machines which have been developed since 1899, there were welt-sewing machines prior to 1899 and they made a chainstitch, but the model K welter sets the stitch tighter around the toe of the shoe than any welt-sewing machine prior to its development.

It is true, as I testified, that the model K welter and the model M stitcher and the No. 5 laster perform operations that had previously been done by machinery. That is also true with reference to the loose nailing and the heel attaching machines except that the loose nailer drives two lengths of nails, which had never been done before. The pulling-over machine performs work which previously was done by hand, and as to the clicking machine, the uppers of light leathers had never been cut by machinery before to my knowledge.

As to the repair part of our business, when a machine gets out of order notice is given to us and a man is sent from the local branch office. If it is a case where a part is to be removed and a new one substituted, our man makes the substitution. That may involve taking the machine down, taking it apart, to insert the new part. The manufacturer pays the catalogue price for the new part. The old part is usually turned over to the superintendent or foreman of the factory, because the manufacturer may think that it could be used again. We have never considered that the old part belonged to us.

The new part does belong to us as a part of the leased machine. It may have to be replaced quite a number of times during the life of the machine.

As to whether our restrictive form of lease requires the payment of a return charge at the expiration of the lease when the machine is returned, that depends on the particular lease which you have in mind. My remembrance is that the Goodyear welt-sewing machine lease and outsole stitching machine lease require a payment providing the machine is returned before the expiration of the term of the lease. It is so with the auxiliary machines, as I remember it, of the Goodyear. I think some of our leases do not call, even under the limited license form, or restricted lease, for a return payment, but I can not be sure.

1043 That return charge is not collected where the manufacturer takes a new and improved machine to replace one which he has returned. In the practice of the company that return charge may be treated as applicable where a man is going out of business. For instance, we get up a new model K to take the place of the previous welt-sewing machine that is in his factory. We go to the man's factory, to our customer, and say: "Here is an improved machine, hadn't you better adopt it?" Assuming that he does, he returns the old machine to us, pays no return charge, but does pay for the broken and missing parts; that is, he is supposed to put the machine back into condition to be again leased, if that machine has not become obsolete. If it has become obsolete, all he pays for are the broken parts and the parts that may be missing in that particular machine. Missing parts result from the practice of operators of taking parts from one machine to put into another machine to replace broken parts. When we work over one of those machines that is called in to be re-leased, we sometimes put into it the new improvements when that can be done. We do not charge the old lessee for the cost of putting in those new improvements. Every lessee is supposed to be entitled to all our improvements at the same charge or on the same terms as every other lessee.

As to the different kinds of shoes which I have shown to the court, it is not quite accurate to state that those different kinds of shoes have been made for a great many years, but that the making of them by machinery is something that is modern. For instance, the McKay sewed shoe never was made by hand and could not be made by hand. The standard screw shoe was never made by hand and probably could not be. Accordingly, those two shoes are developments of machines. The pegged shoe was made by hand, and the turn shoe and welt shoe were made by hand for many years before the invention of the turn-sewing machine, the welt sewing machine and the outsole stitching machine.

The United Company never engaged in the business of manufacturing shoes. We have, of course, made shoes in small lots for experimentation and development, and we have developed new kinds of shoes.

Referring to the statement which I filed, showing the initial payments on Goodyear department auxiliary machines, we put out those machines either on an initial payment basis or on a rental. When we charge a rental we don't charge any initial payment; and when an initial payment is made there is no rental.

As to my testimony in regard to receipts from Goodyear department auxiliary machines during the year 1911, I stated that we charged lessees of Goodyear department auxiliary machines $83,420.22 for rental on those machines for that calendar year. That did not include machines put out during that year on initial payment.

As to how a portion of that amount was paid back, from the date of the adoption of the no initial payment lease for welt sewing and outsole stitching machines and the rental terms for the auxiliary machines, we allowed any manufacturer who
1044 had made initial payments on the machines, when he changed to the other leases, to a credit of a proportion, say 50 per cent, of the amounts which he had paid, so that such a manufacturer was placed on a parity with those who then took their machines on the no-initial basis. Those credits were applied in the cancellation of the payments due as rentals on the Goodyear auxiliary machines and they amounted in 1911 to $31,173. That is, we would permit a lessee who had his auxiliary machines on the initial payment basis to change to a rental basis and give him a credit based on the amount he had paid when he took them. Similarly he could change back from the other to the initial basis. That sum, $31,173, was included in the total of $83,000, so that the actual money received by us was about $52,000. If there had been no such credits we would have received the $83,000 in actual money.

We both sell and lease the McKay sewing machine. There is no royalty on that machine. On our improved McKay sewing machine, model B, the rental is $5 a month, but I think there is no rental on the old style of machine. The sale price of the model B machine is $600. The sale price of the old type of McKay sewing machine was $225 for a new machine and $125 for a rebuilt machine.

As to my testimony about being informed of the infringements of Plant's patents by our company, my understanding

in all cases where we infringed the patents owned by Mr. Plant was that we had been developing machines for some time in our experimental department at the Beverly factory; that we had machines in all stages of development; some of them, I think, we were even putting on the market at the time when Mr. Plant's patents were issued, and then we found for the first time that we infringed claims contained in the patents issued to Mr. Plant. We infringed none of his patents intentionally, if that is what you mean.

We have no knowledge whatever of applications pending in the Patent Office, except when we are brought into interference with an application before the patent is issued.

With reference to the list of concerns which have been putting out welt and turn shoe machines and outsole-stitching machines, I do not know what has become of the Mills turn-shoe machine.

1045 We haven't it. I think I have seen one of them. My remembrance is that from about 1900 to 1902 there were quite a number of them in the field. I wouldn't say that I have not heard of them since then. It has been quite a number of years since I have heard of the machine being on the market. I understand that the Mills machines were being manufactured in the Stanley Company's machine shop.

I could not tell what became of the Loop-Lock Turn Shoe Machine Company. I only know that up to a year or two ago Mr. Guptill, who testified as a witness for petitioner, made practically all his shoes on those machines. As far as I know the company is doing business now. I have heard of the machine since 1903. I don't think I ever saw one of the Champion outsole-stitching machines, and I wish to say that there are many of these machines which I have never seen. I simply know, as anyone in this business trying to collect information would know, that those companies had been doing business, but I don't go into a shoe factory once in five years. I understand that the Champion Company is doing business now, but have no idea of the extent of the business.

The Duplessis Company was succeeded by the Hamel Shoe Machinery Company, I think.

I remember knowing about the Heys turn-shoe machine at the time. We didn't acquire it with the Bresnahan Company. I know that company is not doing business, because Mr. Heys is now at work for us. I think they ceased doing business when Mr. Plant became interested with them and made their factory an experimental shop.

The Union Lockstitch Machine Company is the concern with which Mr. Merrick and Mr. Luitweiler are connected.

I know nothing about the extent of the business done by the Larsen Machine Company. My remembrance is that it tried to sell out to us and that we did not acquire it.

The Fox turn-shoe sewing machine is still on the market, and I understand it is being put out by the Haverhill Shoe Machinery Company. I also understand that the Webster
1046 turn-shoe sewing machine is being put out by the Haverhill Company. It may be that the two machines are the same.

I know about the Universal Shoe Machinery Company only in a very general way. My remembrance is that it is located in St. Louis. It may be that the Champion Shoe Machinery Company was the predecessor of the Universal Company.

I remember having heard of welting, turn-sewing, and outsole stitching machines being brought into this country from abroad, but I have no personal knowledge as to that. I can not state what company I heard had imported machines into this country and sold or leased them, but I know that they were offered in this country.

1047 JANUARY 13, 1914.

HAROLD G. DONHAM, witness for defendants, recalled.

Cross-examination:

At the request of counsel for petitioner I made an investigation to ascertain how many concerns hold machines under the lease of plaintiff's Exhibit 32 (Rec., p. —), which was the new form of metallic lease with initial payment and without restriction. This was the lease with the typewritten rider attached to it. I found that there were only eight machines put out under that particular form of lease with that particular form of rider, and those machines were all leased to F. E. Leavitt & Company, of Haverhill.

Subsequently we printed a regular initial payment form of lease without the restriction. That, however, was printed only a short time before the bill was filed, and I find that there was no instance of its use before December 12, 1911, when the bill was filed; it has been used since.

At the request of counsel for petitioner I have had prepared a list of the officers and directors of the United Shoe Machinery Company, of New Jersey, from the date of its organization up to 1908. This is plaintiff's Exhibit 274.

Beginning with 1908 the annual reports were printed and the officers and directors are shown in those annual reports which have been put in as exhibits.

Direct examination resumed:

I produce a copy of a letter sent by the company to F. E. Leavitt, of Haverhill:

The situation in that case was this: In 1910 Mr. Leavitt was manufacturing turn shoes, using the Duplessis turn shoe sewing machine. He desired to use some of our machines in connection with it, and asked us to quote him terms upon lasting machines, metallic department machines, heeling department machines, McKay sewing machines, and various general department machines. We did so by a letter dated September 2d, 1910, addressed to Mr. F. E. Leavitt, and following our quotation of the terms named he leased from us upon the initial payment lease without restriction lasting machines and metallic machines, and he purchased from us outright quite a large number of general department machines which he installed in the factory with his Duplessis turn sewing machine, and has been using since.

Defendants' Exhibit 334 is a copy of that letter dated September 2, 1910.

1048 DEFENDANTS' EXHIBIT 334.

SEPTEMBER 2, 1910.

F. E. LEAVITT, Esq., *Haverhill, Mass.*

DEAR SIR: We have been requested by you through our Mr. Smith to quote terms for the installation in your factory of the machines hereinafter mentioned upon conditions which will not preclude the use of the same by you in conjunction with certain machinery now in your possession. Complying therewith we beg to say that we will install the following machines under lease at the lease premium indicated—rents and royalties to be at usual rates:

	Lease premium.
LASTING MACHINE DEPARTMENT.	
1 Consolidated hand method McKay lasting machine	$300.00
METALLIC DEPARTMENT.	
1 staple fastening machine	100.00
1 Universal slugging machine	250.00
1 loose nailing machine	250.00
1 string nail tacking machine	75.00
1 taper nail tacking machine	75.00
HEELING DEPARTMENT.	
1 McKay automatic heel loading and attaching machine	400.00
1 McKay heel trimming and randing machine	150.00
1 spring heel trimming machine	100.00

GENERAL DEPARTMENT.

1 McKay sewing machine..... 100.00

And that we will sell to you outright the following machines at the prices indicated:

	Price.
1 Atlas leveling machine, model A	$500.00
1 heel scouring machine	65.00
1 twin edge setting machine	150.00
1 heel breast scouring machine	50.00
2 finishing shafts, 72", at $12.00 each	24.00
1 Victor rolling machine, model E	250.00
1 improved gearless sole-cutting machine, model C	225.00
1 improved veneer press (6 sections)	18.00
1 American twin sole moulding machine	450.00
1 Apex channeling machine	65.00
1 Apex feather-edge and shank-reducing machine, model A	35.00
1 Apex channel opening machine, model C	45.00
1 Apex tap skiving or rand-splitting machine, model C	50.00
1 Apex tap & sole rounding machine, Model A	35.00
1 Crescent toe-gouging machine, model C	125.00

Yours, very truly,

UNITED SHOE MACHINERY COMPANY.

By

1049 At an earlier time in your examination I asked you if you had looked at the chart purporting to show the tying clauses which is attached to the Government's bill, and at that time you were not ready to point out——

BROWN, J. I thought that had been ruled out.

Mr. GREGG. It was never offered in evidence, your honor.

BROWN, J. It is not in evidence?

Mr. GREGG. Never offered in evidence.

BROWN, J. Do you desire to put it in yourself?

Mr. CHOATE. No; I do not. I had an idea it was in.

Mr. GREGG. No; it was never offered.

BROWN, J. It was discussed slightly and then, I think, withdrawn.

Mr. FOWLER. I think, on cross-examination I asked Mr. Winslow something about it and then withdrew it.

Mr. GREGG. It was discussed here in open court and I have no recollection of ever offering it.

Mr. CHOATE. It isn't claimed that it is in?

Mr. GREGG. No.

Mr. FOWLER. Your honors, I asked Mr. Winslow something about it in a general way, and he said he understood it wasn't right, and I made the remark: "Well, I will not undertake to prove by you its correctness." That is all there is in the record.

In connection with the riders which I previously testified about I was asked how the trade in general knew that such riders were available. As an illustration as to how the trade knew about them, I stated that from the earliest times there have been furnished to lessees of Goodyear machines blank forms upon which they report the number of shoes operated upon as the basis of royalty charges. Those blanks have always had upon them columns for inserting the numbers of the special kinds of shoes to which the riders that have been used to any considerable extent relate.

For example, on these forms there is a column headed "McKay welts, stitchdowns, and sandals," another column "Hand welts, repair work," and another column "Fairstitch for ornamentation only." Below each of these headings are blanks for filling in the number of pairs of that kind of shoes on which the machines should be used. It was generally known in the trade that anybody who wished could obtain the machines for doing such work.

The operator on the machine fills in the blanks and half the sheet is torn off and sent to the company, the other half is the stub which the lessees retain. I have here forms of such blanks dated 1902, 1905, and 1910, and also a book of blanks for the current year. These constitute defendants, Exhibit 335 (a physical exhibit).

Cross-examination resumed:

Mr. Leavitt took several Consolidated hand-method lasting machines on the initial payment form of lease, and he paid $300 initial payment for each.

When that machine is taken on the restricted form of lease, there is no initial payment and the royalty is five-eighths of a cent per pair; on the unrestricted form of lease there is an initial payment of $300.00, but the royalty is only a half a cent per
1050 pair. In other words, the royalty on that particular machine is less when the machine is taken upon the initial-payment lease than when it is taken upon the restricted lease.

Mr. Leavitt also took quite a number of metallic machines. There is no direct royalty charge on metallic machines. The return received is derived from selling the fastening material which is used in the machines, and both the restricted and the unrestricted lease provide that the lessee shall purchase that material from the United Company. If the lessee takes the restricted lease there is no initial payment.

In the heeling department the royalty is the same whether the machine is taken upon the restricted or unrestricted form of lease, and the unrestricted form involves the payment of an initial premium.

Had Mr. Leavitt wished to take the automatic heel loading and attaching machine upon the restricted form, he would have been required to make no initial payment and the machines would have been restricted to use with our turn sewing machine. As he wished to use them with another turn sewing machine, in respect to which, of course, we received no return, our quotation to him was an initial payment of $400.00 for that particular heeling machine, not restricted to use with our machines. On other machines of the heeling department the quotation was $150.00 for one and $100.00 for the other.

The initial payment for the McKay sewing machine in the general department was $100.00. That machine carried no royalty.

(With reference to the exhibits attached to the petition, the following discussion took place:)

PUTNAM, J. The matter of those exhibits we ought to dispose of this morning, whether they would be considered in the case or not. I think we are practically agreed that they would not be considered in the case as proved, but we couldn't quite agree on the form of the entry to be made.

Mr. FOWLER. We all agree as to what should be done about those exhibits that are attached to the original bill; that is, so far as we are concerned, they may be omitted from the record, because such of those exhibits as have been proven, have been proven by the introduction of other leases and documents which are identical in character, but are simply a separate paper.

PUTNAM, J. Are you satisfied with that statement, Mr. Choate?

Mr. CHOATE. Yes, your honor.

PUTNAM, J. Let that go in the record, and it will cover that.

1051 Mr. FOWLER. If the case goes to the Supreme Court, I see no need of encumbering the record there with the exhibits.

BROWN, J. I understand that this statement that you have just made, Mr. Fowler, applies to the exhibits in volume 1, which purports on its cover to contain the answer and bill of particulars, and includes Exhibits 1 to 23, inclusive.

Mr. GREGG. Yes; that is right.

Mr. FOWLER. Yes; that embraces all the leases and the diagram, as I understand it.

BROWN, J. That is, from page 90 to page 225, the matter beginning on page 90 and ending on unnumbered page 224, the page which would be 224.

Mr. GREGG. Beginning on page 90; yes, sir.

BROWN, J. And ending on the unnumbered page preceding 225, which would be page 224.

Mr. GREGG. Which would be page 224; yes, sir, that is correct.
Mr. FOWLER. Page 223, and then including the diagram.

1052

JANUARY 13, 1914.

ELMER P. HOWE, witness for defendants, recalled.

Prior to the Plant purchase I gave very careful consideration to the conflict between the patents of Mr. Plant and the patents of the United Company. As fast as Mr. Plant's patents issued so that we had knowledge of what they were, in addition to such knowledge as we had derived from interference proceedings, I examined the patents and discussed the bearing of those patents with some of our men who were particularly engaged in the development of machines at the Beverly factory. I discovered that if we pursued the construction of some of our experimental machines as we had intended to, we should become liable to infringement suits by Plant. I also found that our No. 5 lasting machine, which we had been putting out in large numbers, probably infringed several of the Plant patents.

That was not done intentionally. We had no knowledge of the Plant patents until they issued from the Patent Office. All our work was done in ignorance of what he was doing. I may say that it is almost always the case that where there is a demand for a particular machine, rival inventors are at work on it. They don't either of them know of the work of the other unless they happen to get into an interference suit in the Patent Office, or one or the other of them gets a patent granted. The number of simultaneous inventions is enormous.

In the case of the Plant patents; if we had not got together, if we had not purchased him, there would have been a large amount of litigation both by the owners of the Plant patents against the United Company, and by the United Company against Plant machines. I discussed those considerations with our counsel, Mr. Fish and Mr. Phillips. I discussed them also with Mr. Winslow and Mr. Howard.

I advised the purchase of the Plant patents and inventions after I had examined the machines at his factory, and especially after he made his proposal to sell. This chaotic condition which might result from the patent situation had considerable weight in my mind. Of course, the controlling consideration for the purchase of the Plant patents was the value, the great value, it seemed to me, of his inventions, especially when combined with and merged in our machines. Then another consideration for the purchase was this avoidance of litigation, either by ourselves against him, which would have cost a great deal of money and would have annoyed the trade very much, the shoe manufac-

turers, and also the cost and annoyance of having to be sued by Plant.

Cross-examination.

I think there were fewer of our machines that infringed Plant's patents than there were of Plant machines which infringed our patents. As to whether the infringement by Plant's machines of our patents was far greater than the infringement by our machines of Plant's patents, it was greater; I cannot say whether it was far greater.

1053

We had determined that Plant's machines infringed our patents some time prior to the purchase, and had brought several suits. As to how we determined that, in some instances we were influenced by an examination of Mr. Plant's patents and we also heard rumors of the way some of his machines were constructed. As to how we got those rumors, I don't remember now and I don't think I knew at the time. I have no information about it now. The question submitted to me was: "Plant's machine is constructed so and so. Does that infringe one of our patents?" I had nothing to do with getting the evidence. I had seen diagrams of Plant's machines, but they were made by our own people.

PUTNAM, J. How much did you say, Mr. Choate, was paid?

Mr. CHOATE. $3,000,000 in cash and a million and a half in stock at par, which was worth fifty, making the total $6,000,000.

PUTNAM, J. How was it divided? How did your people divide it?

The WITNESS. They thought the stock in the T. G. Plant Company——

PUTNAM, J. What did they call that?

Mr. CHOATE. Three million and a half. And the patents two million and a half.

The WITNESS. The purchase involved an interest charge and a dividend charge on the corporation of $300,000 a year.

Mr. FOWLER. I believe the capital stock of the T. G. Plant Company was——

The WITNESS. $3,750,000.

Mr. CHOATE. And sixty per cent of the earnings of the Plant Company were sufficient to pay the entire carrying charge of the purchase.

The WITNESS. Yes, in a lean year for the Plant Shoe Company, because they had introduced Plant's machines at great expense.

1054 JANUARY 13, 1914.

WILLIAM R. SAMPSON, witness for defendants, resumed.

Direct examination resumed:

I have prepared the index list of machines offered by shoe machinery manufacturers and dealers other than the United Company, and I produce the list, which is defendants' Exhibit (Record, p. —).

Q. Now, Mr. Sampson, last Thursday, I think it was, counsel for the United States said, as we understood it, that they did not claim that the United Shoe Machinery Company had a monopoly of machines other than those for preparing and attaching the soles of shoes to the uppers, of clicking machines, and of eyeletting machines. Since that statement was made, have you prepared a list of machines offered by shoe machinery manufacturers and dealers other than the Shoe Machinery Company for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and dieing-out or clicking machines?

A. I have.

Q. Is that the list [showing list to witness]?

A. It is.

Mr. CHOATE. We offer this, if the Court please.

(List of machines offered by shoe machinery manufacturers and dealers other than the United Company for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and dieing-out or clicking machines is defendants' Exhibit 337, Record, p. —).

Cross-examination:

As to what per cent of the business is done by our company in the Star channeling and cementing machine I have no way of knowing, and I have no idea. To the best of my knowledge the work is largely done by hand. As to whether our company puts out more than eighty per cent of that kind of machine, I have no way of knowing.

As to whether our company puts out more than eighty per cent of the channel-laying machines, I would have no way of knowing that. That is another operation that is done a great deal by hand. I think we sell very few machines at the present time.

As to the Hadaway stitch separator and as to whether we sell about all of the machines of that kind, that is outside of my department and I have no intimate knowledge on that.

As to the sole-leveling machine, I could not state whether we put out more than eighty per cent of the machines of that kind. There are sole-leveling machines in both the Goodyear and general departments.

As to the heel seat rounding machine, we have a ~~machine~~ machines
1055 in the general department of which we sell a few. There is also a machine in the Goodyear department.

As to whether we put out nearly all the heel compressing machines and nearly all the automatic heel loading and attaching machines, those are both in the heeling department, outside my department.

I haven't knowledge as to whether we put out nearly all the slugging machines that are used in this country. That is a metallic department machine.

Mr. FOWLER. Your honors, I am just using the record of that moving picture show that your honors saw.

The WITNESS. As to whether I really know anything as to the relative amount of business that is done by these several companies that I call competing companies, my work is all on the general department machines, and I am not closely in touch with what the other departments are doing. As to whether, with reference to the general department, I have much idea of the relative amount of business done by the outside companies, I have no way of knowing what the outside companies are doing. I do the best I can myself with our machines. In answer to your question whether the only thing I do know is that I have had some correspondence with the different concerns and have examined some catalogs, and have ascertained that there are concerns which have been offering these various kinds of machines in the market—of course, the general department machines have always been in competition. Nearly every shoe machinery dealer comes into competition with some of the general department machines.

Direct examination resumed:

I know that these men whose catalogs I have produced are holding themselves out as being ready to furnish the machines that those catalogs refer to. They have agents, they are advertising, and they are here in the market presenting what they have to the trade if the trade wants it.

As to the machines in the general department, of which I have particular charge, all, with the exception of a very few, are in competition with machines furnished by other manufacturers.

Cross-examination resumed:

I do not know the extent of the business done by those competing machines. I know they do some, but I have no way of knowing how much they do.

As to how I know that these various concerns that have catalogs are holding themselves out to the trade as furnishing these various machines, I know it from the advertisements and

catalogs which they issue and from general trade knowledge. I have not undertaken to buy anything from them. I make friendly calls on them occasionally, several of them, and see the machines which they tell me they have for sale. I don't know how many they are selling.

1056 Direct examination resumed.

All these general department machines which are in competition with other machines on the market are sold outright by the United Company.

(At this point, on January 14, 1914, petitioner filed its "Request for leave to amend petition" (supra, Vol. I, p. —).

An adjournment was had until February 3, 1914. On that date defendants filed "Objections of defendants to motion of United States to amend its bill made January 14, 1914" (supra, Vol. I, p. —).

After an argument by counsel the court ruled as follows:

"As the request of the United States filed January 14, 1914, for leave to make sundry amendments to the petition with reference to sections IV, VIII, and XI, with the substitutions, is not urged as though the United States deemed the same necessary, and as it is objected to by the defendants, we do not feel justified at this late stage in allowing it, and the same is disallowed. This, however, is with the express statement on the part of the court that it reserves all questions with reference to the construction of the pleadings as urged by the defendants, whether as original or as modified by the progress of the case, if so modified.

"The request of the United States to be allowed to amend section XII is denied.

"It is ordered that the amendments offered by the United States and this ruling with reference thereto be made a part of the record of the proceedings.")

1057 Evidence for the United States in reply before the court February 3, 1914–February 6, 1914.

Appearances.

For the United States: James A. Fowler, assistant to the Attorney General; William S. Gregg, special assistant to the Attorney General; Allen Webster, special assistant to the Attorney General.

(After the decision in the District Court): Constantine J. Smyth, H. LaRue Brown, special assistants to the Attorney General.

For the defendants: Frederick P. Fish, Charles F. Choate, jr., William A. Sargeant, Malcolm Donald, Harold G. Donham, Walter B. Farr, Lafayette R. Chamberlin.

FEBRUARY 3, 1914.

EDWIN B. STIMPSON, witness for the United States.

1058 My name is Edwin B. Stimpson. I reside in Brooklyn, New York. I am a manufacturer of eyeletting, perforating and punching machines for bookbinders and have been engaged in that business for forty years. The catalogue of Edwin B. Stimpson & Son, which is defendants' Exhibit 314, is a catalogue of our company. It was printed back in 1890. During the year 1911 we put out about twenty-five eyeletting machines, which went to box manufacturers. None of them went to shoe manufacturers. In 1911 we put out not more than two or three pinking machines, which went probably to the hat trade. We have not sold any machines of any kind to shoe manufacturers for eight or nine years. The letter signed by me on May 24, 1913, defendants' Exhibit 321, was dictated by Mr. Nichols, of the United Shoe Machinery Company. He came to our office, and asked for literature on our machines, and for price lists. I gave him those and a catalogue. He then asked me to dictate a letter to his company, and as I did not know what he wanted, I asked him to dictate it himself. In dictating he added more than I could sign, so I told the stenographer to cross it out. The letter which I signed contained a statement that I built an insole flexing machine. That is not true. We don't build one. He told me that our strip cutter which was used for stripping up leather for belts and has always been sold for that purpose, was an insole flexing machine, and I therefore signed the letter stating that we could supply such a machine. At that time, and right along, I have been trying to have the United Shoe Machinery Company sell me goods and appoint me an agent in Brooklyn for some of their machinery, and I supposed

1059 that Mr. Nichols was there to size me up and see what kind of a place I had and what kind of a representative I would make. I did not ask him the purpose for which he wanted the letter, and he did not tell me. As to whether we can supply insole flexing machines, we can supply strip cutters. They are used on belts for stripping up leather. They were used years ago in the shoe trade for cutting welts and for that purpose only, so far as I know. We have no business at the present time, and have not had for several years with shoe manufacturers in shoe machinery.

Cross-examination:

The catalogue which is produced is the catalogue which I gave Mr. Nichols, and is the only one which we have. We have not used it for some years, and we have nothing more recent. He came in and asked for literature on what we had to sell. I gave him the circulars referring to the strip cutters, which was what he first asked for. He asked me for a catalogue, and I gave him that one. We make some of the machines shown in the catalogue. At one time we made all the pinking machines [indicating]. For the pinking machines we are now only agents. I did not intend to misprecsent what we were doing to Mr. Nichols. We do build the hand rivetting machine and the foot-power hand rivetting machine, and the attachments which go with them, but are agents only for the No. 2 J. L. T. rivetting machines. We supply them to the trade. We can supply either as makers or agents the machines shown in the catalogue. The letter referred to by Mr. Gregg was signed by me "Edwin B. Stimpson, president."

(Mr. Choate reads the letter as follows:

UNITED SHOE MACHINERY COMPANY,
205 Lincoln Street, Boston.

GENTLEMEN: We are sending you to-day our illustrated catalogue showing machines of our manufacture. In addition to the illustrations in the catalogue we build an insole flexing machine. Any of these machines that you do not manufacture yourselves and desire to purchase, we will be pleased to supply you.

Yours, truly,

EDWIN B. STIMPSON COMPANY,
By EDWIN B. STIMPSON, *President.*)

1060 The statement in that letter that we built an insole flexing machine is true if strip cutters are insole flexing machines. I made my statement in good faith. I meant it to be the truth and did not mean to misrepresent anything. I also made the last statement of the letter in good faith.

A Mr. Tucker, connected with the Department of Justice, came to see me, and asked me to come over here and testify that the catalogue which had been produced was our catalogue, and had been published years ago. It is our catalogue, but we are not using it. It is our only catalogue. We have published a number of catalogues since then, if you call that a catalogue. I gave Mr. Nichols what he asked for, and I did not show Mr. Nichols any of our more recent catalogues because he didn't ask

for them. He asked for strip cutters, and I gave him the literature which shows strip cutters.

Q. Have you got a cut of this thing you call a strip cutter?

A. Yes. [Produces cut.]

Q. And its function is to do what?

A. To strip leather up.

Q. By "to strip leather up" you mean to make strips of it?

A. To make strips of it.

Q. To cut strips of welt?

A. Yes.

Q. Which can be used for that purpose?

A. Which can be used for that purpose.

Direct examination resumed:

The hand and foot power riveting machines which I mentioned in cross-examination do not go to shoe manufacturers. The only machines shown in the catalogue which I have placed with shoe manufacturers within the last five years are the pinking and perforating machines, which are used for ornamental perforations.

1061 FEBRUARY 3, 1914.

EARL T. RUSSELL, witness for the United States.

My name is Earl T. Russell. I live in New York. I am a stenographer for the E. B. Stimpson Co. I took the dictation of the letter dated May 24, 1913, addressed to the United Shoe Machinery Company and signed by Edwin B. Stimpson, from Mr. Nichols of the United Shoe Machinery Company. Mr. Nichols dictated the letter, and as he went along Mr. Stimpson told me to cross out part of it, and then Mr. Nichols went along and dictated more of the letter. The only conversation which I heard regarding the insole flexing machine was that Mr. Stimpson said, "We do not make it," and Mr. Nichols said, "That is all right—put it in."

(No cross-examination.)

1062 FEBRUARY 3, 1914.

EDWARD E. SPENCER, Jr., witness for the United States.

My name is Edward E. Spencer, jr. I live in New York. My business is shoe manufacturers' supplies, machinery, and general machinist. I was formerly connected with Edward E. Spencer & Company and was in charge of their general mechanical department. Edward E. Spencer is my father. That company went into bankruptcy in August, 1912, and is not now engaged in business. The catalogue of Edward E. Spencer and Company which has been produced (defendants' Exhibit 312) was printed in 1897.

Edward E. Spencer & Company built channeling, rolling, splitting, impression stitch, buffing, and eyeletting machines, finishing shafts, strip cutters, punchers, and special dies and various small tools.

The company for five years prior to 1911 did a business in shoe machinery and accessories of twenty-five to thirty thousand dollars a year. The amount of business done in shoe machinery with the shoe trade in 1911 was very small.

Shoe machinery was not the principal business of the company, which dealt chiefly in general findings, entering into the accessories of which the shoe is constructed, exclusive of leather. They sold nails, tacks, wax, thread, ink, and linings.

I know of the machine business of John O'Flaherty of Rouses Point, New York, and have handled their lockstitch machine for harness work. It could be used in the heavier upper work on shoes, but not in the bottoming of the shoe.

John D. Randall & Company of Cincinnati put out machines for harness trade. The only machines put out by them which could be used in the shoe trade were strip cutters.

Spencer & Company were agents for the Ross-Moyer Manufacturing Company of Cincinnati. That company put out edge

1063

setting, buffing, randing, heel scouring and heel breasting machines, brush shafts, and cement pots. Our agency was discontinued when the United Company acquired the Ross-Moyer Company.

Cross-examination:

Edward E. Spencer & Company were in business up to August, 1912. There is a later catalogue than that which is Exhibit 312. The other catalogue—the later one—did not deal with machinery particularly. There were a few items of machinery, but it was devoted more especially to supplies. So far as machinery was concerned, Exhibit 312 was in use up to the time the company went out of business. Spencer and Company could not furnish some of the machines later than a year or two after the issue of the catalogue. We both manufactured machines and dealt with them as agents. At the time when the companies for which they were agents were taken over by the United Company, the Edward E. Spencer Company ceased to be agents for them. The Ross-Moyer Company was one example. There were others.

A strip cutter can be used for making welting, and formerly was used extensively for that purpose. It is not much used at present for making welting. By an adjustment of the knives it could be converted into a machine for flexing, and it has been

so used. It is sometimes known as an insole flexer. My father is living. He was the principal proprietor and manager of the Edward E. Spencer Company. I was in charge of their general mechanical department for about twenty or twenty-five years before 1912. The catalogue which is Exhibit 312 was never withdrawn.

Direct examination resumed:

A few copies of the catalog of Exhibit 312 were sent out during the time of the old concern. I may have sent out a few copies recently, but very few to shoe manufacturers, principally outside the shoe line.

1064 Cross-examination resumed:

Some copies of the catalogue were sent out during the last year in which Edward E. Spencer and Company was in business. I do not describe myself as successor of that company.

1065 FEBRUARY 3, 1914.

JOHN F. MORRIS, witness for the United States.

My name is John F. Morris. I am New England manager of the Singer Sewing Machine Company, and am located in Boston. The Singer Sewing Machine Company does not manufacture or put out any machines used for preparing, attaching, or finishing the bottoms of shoes. It does not manufacture eyeletting or clicking machines. We do not handle those classes of machinery as agents for any other concern.

Cross-examination:

I do not know whether my company or anybody connected with it has anything to do with the Hamel Shoe Machinery Company. Mr. John Sullivan has been connected with my company, and may be now connected with it. I have never known his title or what his office was. If he is a director or general sales manager, it is not to my knowledge. He may have an interest in different machines that are coming through—buttonhole machines—something of that kind. He is reported to be President of the Hamel Shoe Machinery Company. If the Singer Sewing Machine Company is backing the Hamel Shoe Machinery Company or supplying it with money, I do not know of the fact.

I wouldn't know it if it were.

1066 FEBRUARY 3, 1914.

EDWARD J. EICHLER, witness for the United States.

My full name is Edward J. Eichler. I reside in Needham, Massachusetts. I am a salesman for the American Tool and Machine Company. We manufacture a belt knife splitting machine, transmission machinery, sugar machinery, lathes, and

extractors for the woolen mills. The company does not manufacture any machines which are used for preparing or attaching the bottoms to the uppers of shoes, nor does it make any eyeletting or clicking machines.

(No cross-examination.)

1067 FEBRUARY 3, 1914.

WILLIAM L. BARBER, witness for the United States.

My name is William L. Barber. I am not now in business—since 1911. I formerly was associated with my father. We dealt in general light machinery and special machines of our own make and invention for making the uppers of shoes, and conducted our business under the name of L. L. Barber and Company. The Company is not now engaged in business. We did not make any machines used for preparing or attaching the bottoms to the uppers of shoes. We did not make any eyeletting or clicking machines.

Cross-examination:

The machines which we made which could be used in the manufacture of shoes were presses, dies for perforating toe caps, and perforating machines for perforating uppers, and some smaller attachments which were used upon Singer sewing machines for stitching uppers.

Our place of business was 40 Lincoln Street. Our market in the shoe industry was largely in New England, to some extent outside. My father had been engaged in business continuously since 1859. He retired in 1911

1068 FEBRUARY 3, 1914.

CHARLES H. LAWRENCE, a witness for the United States.

My name is Charles H. Lawrence. I live in Cambridge. My business is manufacturing and dealing in shoe machinery and shoe patterns. The name of my concern is Coburn & Lawrence Company, and is located in Boston, 154 Lincoln St. We manufacture or put out the Champion seam-rubbing machine, a size marking machine, a blacking machine, and, as agents, the Rogers vamp-marking machine.

We do not manufacture or put out any machines used for preparing and attaching the bottoms to the uppers of shoes, nor any eyeletting or clicking machines.

(No cross-examination.)

1069 FEBRUARY 3, 1914.

LESLIE L. HARTWELL, a witness for the United States.

My name is Leslie L. Hartwell. I live in Revere and am superintendent for A. G. Walton & Company, who are shoe man-

ufacturers. I have put out a few machines which can be used in manufacturing shoes. They were a grooving machine, a sanding machine, a heel-building machine, and a counter-dividing machine. The last machine was put out about two years ago. None of the machines which I have developed is used in connection with the preparing or attaching the bottoms to the uppers of shoes. I made some of the heel-building machines for our own concern and then sold the rights to manufacture them to the Young Machinery Company. That is the power heel-building machine which Young has on the market now.

Cross-examination:

My heel-building machine builds heels. My grooving machine grooves soles ~~preparatory~~ to putting them on the upper. The sanding machine sands the grain from off the tap of a Goodyear shoe so that it will stick to the upper. The tap is a part of the sole. The counter-dividing machine permits counters to be made double, and afterwards divided. The counter is the part of the shoe which reinforces the heel seat. In fact each of my machines had something to do with the bottom before it was attached to the upper.

Direct-examination resumed:

I built one heel-building machine for our concern, and sold to the Young Heel Building Machine Company the right to reproduce the machine in other factories. The machine
1070 is used by heel manufacturers, and by shoe manufacturers who make their heels. It is the universal heel-building machine to-day.

Cross-examination resumed:

A great many shoe manufacturers make their own heels. Each of the machines which I have mentioned is used in the Walton factory.

1071 FEBRUARY 3, 1914.

ARTHUR F. BROWN, witness for the United States.

My name is Arthur F. Brown. I live in Newton. I am a manufacturer's agent, and represent the Davis Sewing Machine Company, of Dayton, Ohio. The machines which they put out are sewing machines for family and manufacturing use, but as far as I know are not used in the manufacture of shoes. We have sold none to shoe manufacturers. I do not see how our manufacturing sewing machines could be used for attaching the bottoms to the uppers of shoes. I am not an expert in shoemaking.

Cross-examination:

We have a catalogue of our machinery. As to whether our sewing machine was ever used for sewing the uppers to shoes, or any parts of them, I haven't seen it used in any stitching rooms that I have visited. I have not urged its use for that purpose. Our type "A" manufacturing sewing machine is adapted for harness and saddlery work, and therefore to work on leather. The machine which we have been trying to sell to the United Company is a machine which we have recently produced, a taping machine, which fastens an adhesive tape to any material, which is particularly adapted to fasten adhesive tape to that part of the upper where the buttons or hooks are attached, in order to reinforce the leather. It was exhibited first to the shoe trade in July, 1912. We are endeavoring to introduce it to shoe manufacturers. It is going pretty far to say that we have been offering to sell it to the United Company. We brought it to their attention. We have no organization for selling to shoe manufacturers.

1072 FEBRUARY 3, 1914.

BENJAMIN F. CHAMBERLAIN, witness for the United States.

My name is Benjamin F. Chamberlain. I am manager of the Walpole Shoe Supply Company, which manufactures and sells shoe supplies and incidental machinery for their use. We make a rib tightener which does the finishing operation on the Gem inner sole. It has been in the market for about two years. We also put out heating machines for heating coated Gem cloth and the adhesive material on it. We have put out possibly fifty rib-tightening machines to shoe manufacturers within the last two years.

Cross-examination:

My place of business is in Boston, 60 South St. We coat canvas (defendants' Exhibit 31), which is used by the United Shoe Machinery Company for its Gem inner sole. We supply a great deal of it, and we also make one machine for performing an operation on the Gem inner sole.

Direct examination resumed:

That machine is the one of which I have testified that we have sold approximately fifty. I have seen in factories machines put out by the United Company which do the same work.

1073 FEBRUARY 3, 1914.

JOSHUA S. WHEELER, witness for the United States.

My name is Joshua S. Wheeler. I live in Winthrop. I am principal owner of the business of J. S. Wheeler & Company,

who make welt cutting machines, cloth cutting machines, and lace cutting machines. We also rebuild shoe machinery. Our factory force consists of from two to six men. We put out a rebuilt machine which we call the Baby splitting machine. The new machines which we put out are the welt cutting, cloth cutting, and lace cutting machines, and a counter divider. All our machines are sold outright. They are not leased. Some of our machines go to shoe manufacturers. Most of our welt cutting machines go to welt manufacturers, although we have sold a few to shoe manufacturers. I buy and rebuild shoe machinery and sell it to shoe manufacturers. That is part of our business. I rebuild almost anything I can buy and get an order for. I have never rebuilt any welt sewing or outsole stitching or heeling machines. I deal with the small machines—vamp machines and sole cutters. It takes in a regular line of machinery outside of the sole stitchers. I have rebuilt National stitchers and Puritan stitchers, and things of that kind. The last stitching machine which I put out was over a year ago. I do not know to whom it went.

Cross-examination:

I do not handle an insole flexing machine, unless they call a welt cutter a flexer. I handle the Baby splitting machine, but I have not built any new machine. The welt cutting machine could be changed over so that it would be a flexing machine and not a welt cutter. I have not been in business long enough to put out any catalogue or advertisements.

1074 Mr. CHOATE. I want to call attention to the fact that all we offered was that this man put out a splitting machine and an insole flexing machine.

Direct examination resumed:

I have been engaged in business since two years ago last July.

1075 FEBRUARY 3, 1914.

FRANK P. SPAULDING, witness for the United States.

My name is Frank P. Spaulding. I live in West Somerville. I am manager of Willcox and Gibbs' Sewing Machine Company's Boston office. That concern puts out sewing machines. It does not put out, so far as I know, any machines used for preparing or attaching the bottoms to the uppers of shoes, nor any eyeletting or clicking machines.

Cross-examination:

We put out a good many machines for stitching the uppers of shoes, and we also put out what we call a Number 5 stitch adjustable tension machine, to which the United Shoe machinery

Company adds an attachment which enables it to perform some operation in connection with the insole. It stitches some channels together, some leather that is raised up on the inner sole. As we put it out it would be used for sewing cloth. You can sew leather with it. It will sew an ordinary chain stitch inseam in leather as we put it out if the leather is not too thick. We put out some sewing machines for operating on uppers—not a very large number. My company, the Singer, and the Union Special Company put out most of the machines used for sewing together the uppers of shoes. We sell or lease our machines all over the United States and our headquarters are in New York. The sewing machines which we put out to shoe manufacturers are all used for sewing uppers, as far as I know. We have been making them for over fifty years.

1076 FEBRUARY 3, 1914.

JOHN H. LINGLEY, witness for the United States.

My name is John H. Lingley. I live in Brockton and am manager of the business of the Puritan Manufacturing Company. It manufactures sewing machines used for fair stitching, counter work, vamping, barring, and strapping.

I can not say how many machines we put out in 1911, or how many to shoe manufacturers. The majority of our machines go to shoe manufacturers. Our fair-stitch machine sews the upper onto the welt. Other than that we do not make any sewing machines which are used for attaching the bottoms of shoes. We sell some of our machines to the United Shoe Machinery Company. I don't know what percentage.

Q. The fair-stitch machine—is that used for attaching the sole to the upper, or is it an ornamental stitch?

A. It is more ornamental, and in the stitch-down shoe they attach the sole to the upper.

Cross-examination:

We sell our machines to anyone that wants them. Among our other customers the United Company is one. We put a good many machines on the market besides our fair-stitching machine. We sell a good many Puritan fair-stitch machines, and have probably sold around a thousand since we first went into business in 1892 or 1894. Practically all of them have been sold to shoe manufacturers, and they are used all over the United States. We sell a few staying machines, which operate on the back seam of a shoe, and a boot counter-stitching machine, which operates on the counter. I can not say whether we sell a button-fly seaming machine, or button-fly staying machine. We do sell a counter-stitching machine and a foxing stitching machine, but do not sell a lining-stitching machine. We also

sell a foxing staying machine, and pocket-strap stitching, quarter-seaming, side staying, vamp-seaming, welt-seaming, and vamp-welt sewing machines. I think we sell a side-staying machine, but am not sure. Our welt-seaming machine attaches a McKay welt to the sole before it is laid. Our Puritan fair-stitching machine and our vamp-welt-seaming machine are used in the operation of attaching the sole to the upper. All the machines mentioned are sold to shoe manufacturers. The Puritan fair-stitch machine is also used largely in making the stitch-down shoe. We have just commenced that. It stitches the upper to the sole of the stitch-down. The stitch-down is the one where the upper is turned outward on the sole and stitched directly through.

1077

Direct examination resumed:

Q. All those machines that have been named, are they separate machines or one machine with a different attachment for a different operation?

A. They are built different. The frame is practically the same; we make one, two, three, and four needle machines.

Q. What do you mean by that?

A. For instance, we make a three-row machine, which stitches three rows at one time. The fair-stitch machine stitches only one row.

Q. (By Mr. CHOATE.) You say the standard is the same; you mean the upright column?

A. Yes; they are about the same, the frame.

Q. But the machine itself is different in each case?

A. Oh, yes; the working parts of the machine are different. We have been making a machine used on the stitch-down shoe only within the last two years.

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FEBRUARY 3, 1914.

CHARLES S. PRESCOTT, witness for the United States.

My name is Charles S. Prescott. I am treasurer of the Lockett Crimping Machine Company, which is located in Brockton. They are manufacturers of crimping machines, which are used for crimping the vamps of shoes. The vamp is part of the upper. We do not make machines which are used in connection with attaching the bottoms to the uppers of shoes. We sell some of our machines to the United Shoe Machinery Company. Most of them we sell ourselves to shoe manufacturers. We have been in business about fifteen years. In 1911 we put out perhaps fifty machines.

Cross-examination:

The Lockett crimping machine forms the vamp so it fits on the last. The vamp is the part from the tip to the point where

the tongue is sewed on, the part which fits down on the last. It gets the upper ready for the operation of lasting—for all the operations that are performed while the upper stays on the last. It has no particular reference to the use of the stitching machine. The crimping operation adjusts the upper to the shape of the last and holds it on the last firmly. We control the marketing of these machines, and we market them ourselves. We have been marketing them all over the United States for fifteen years. Among our customers is the United Company.

Direct examination resumed:

The crimping operation precedes the pulling-over operation. The United Company has no machine for performing the crimping operation, so far as I know.

1079 Cross-examination resumed:

The crimping machine is also used where shoes are pulled over by hand and on shoes which are lasted by hand.

1080 FEBRUARY 3, 1914.

L. E. JOHNSON, witness for the United States.

My name is L. E. Johnson. I am connected with the Victor Shoe Machinery Company, which manufactures rough rounding and channeling machines and an outsole stitching machine. The last named is used for attaching the outsole to the welt after the welt is attached to the upper. We have put out about thirty-two lock-stitch machines to small shoe manufacturers who are not using the standard line of shoe machinery. By the "standard line of shoe machinery" I mean the United line. We sell our machines outright. So far as I know, the persons who have bought them were not using United Company machines. The other machine which we put out is a rough rounding and channeling machine. We have put three of them out. They have gone to repair men, to the rapid shoe repair trade, and not to shoe manufacturers. We have put out certain finishing machines used for finishing shoes, which include burnishing and edge-setting and everything of that kind, in the repair trade; nothing to manufacturers.

I know something about the business of the Universal Shoe Machinery Company and the Champion Shoe Machinery Company of St. Louis. They supply the rapid shoe repairing trade and I have handled their machines. I am not interested in the companies. They put out a lock-stitch machine, a welt machine, that is, an inseamer, a finishing machine, and a nailing machine. We have placed some machinery with the repair trade for the Champion Shoe Machinery Company.

Cross-examination:

A lock-stitch machine is a machine which sews the outer sole to the welt, as distinguished from the stitching machine
1081 which sews the inner sole. We make such a machine.

We were organized three years ago, but only began to put out our machines last September. We didn't get through the experimental stage and ready to make deliveries until then. Since then we have delivered thirty-two of our lock-stitch machines. We have been putting out a rough rounder and channeler longer than that. It is a machine intended to perform an operation on the sole of a shoe, for completing the work of attaching the sole to the upper. Our finishing shaft sands the bottoms and edges and heels of shoes that have been repaired or made over, and finishes and sets and trims the edges after it is complete. It performs that operation in finishing up the bottoming operation. It could be used upon a new shoe. It is adaptable for either purpose. Our indenting machine indents the stitches, but it could hardly be used on a new shoe, because the wheel can not get into the shank.

Q. Your skiving machine—what is that for?

A. That is for skiving the base of any kind of sole leather before the taps are put on for half-soling.

Q. It could be used for skiving any kind of soles?

A. It could be; yes; I judge so.

Q. Whether old or new?

A. Yes, sir.

Our tacking machine is a foot-power loose nailer, adapted only to repair work. It is used for nailing outer soles on to the insoles.

Q. Except for the fact that that is a foot-power machine, is there any reason why it should not used on new shoes?

A. The only reason would be the lack of speed.

An attempt has been made to adapt it to power, but it was not successful. I have known the gentleman at the head of the Universal Shoe Machinery Company for the last eleven years. They have been in business all that time as the Champion Shoe Machinery Company, not as the Universal. For about a year and a half they have been putting out the welt and turn sewing machine. It is adapted to making either welt or turn shoes. The loose nailing machine nails on soles. They have had that on the market for eighteen months at least. Their lock-stitch and straight needle machine has been on the market for ten or eleven years.

It is used for sewing on half soles, but it would not sew on
1082 full soles, because the straight needle is not applicable for getting into the shank. It could not do fair stitching, it

would not be classed as a fair-stitch machine because it used heavier thread and was a lock stitch. It is an out sole stitcher. Their finishing shaft is substantially the same thing that we are selling. It is for finishing soles on either old or new shoes. They have been getting them out for some years. Every one of their machines and every one of our machines is used in connection with the operation of attaching the bottom of the shoe to the upper.

Direct examination resumed:

The business of the Champion Shoe Machinery Company is almost exclusively with the repair trade. The Universal Shoe Machinery Company is intended to do business with the shoe factory trade, but I do not know anything about the amount of business they do.

I am a stockholder in the Specialty Shoe Machinery Company of St. Joseph, Missouri, which makes foot-power loose nailing machines. They have been engaged in business eight years. The business is exclusively with the repair trade.

Cross-examination resumed:

That company formerly, for about 5 years, made a finishing shaft intended to finish soles after they had been attached to the upper, but discontinued three or four years ago. Now they make a machine for nailing on soles. Both the loose-nailing machine and the finishing shaft are used in operations connected with the attaching of the bottom of the shoe to the upper.

Direct examination resumed:

They are used exclusively in the repair trade.

1083 Cross-examination resumed:

The loose nailing machine is not adapted to use on new shoes, because the last would have to be taken out of the upper, and because it is a foot-power machine. The finishing machine is a power machine, and would be adapted for new shoes, if the man could get along with a small space.

1084 FEBRUARY 4, 1914.

STEPHEN SNOW, witness for the United States.

My name is Stephen Snow. I was formerly employed in the shoe factories of George E. Keith and W. L. Douglas. I worked for Mr. Douglas for two years. He was then making men's welt and McKay shoes. His daily capacity was then about ten thousand pairs a day. He used the Consolidated hand-method lasting machine and the Ideal lasting machine. He had more Ideal machines than Consolidated. He used the Ideal machines on both the McKay and welt shoes. I can not state what percentage of the welt shoes were lasted on the Ideal machines. I

had charge of the Ideal lasting machines. I did not have anything to do with the Consolidated. Mr. Douglas used more than a dozen Ideal lasting machines. I won't go any farther than a dozen. I do not remember that he had any Chase lasting machines.

I worked for Mr. George E. Keith for the year immediately preceding my going with Mr. Douglas. He was making men's McKay and welt shoes, and his capacity was about ten thousand pairs a day. I do not remember that he had any kind of lasting machines except the Ideal machines of which I had charge. He had about a dozen of them. I do not remember that he had any Chase machines. The Ideal machine could not be used successfully in lasting men's heavy shoes, because in wiping over the toe, the shoe lifted from the toe piece. That was not on account of the strength of the machine—it was on account of what it lacked. Mr. Douglas and Mr. Keith made about a four-dollar shoe which was as heavy as they generally make in those factories.

1085 Cross-examination:

I left Mr. Douglas in April, 1904, and since that time, I have been a watchman in the Statehouse. I was at Douglas factory from the spring of 1902 to the spring of 1904, and at the Keith factory from the spring of 1901 to the spring of 1902. My particular work was with the Ideal machines. My attention was upon them, and I did not know what else they had. I was a mechanic. I was an operator, too. I was not a shoemaker.

Q. Did you make an invention which was attached to the Ideal machine when it was installed in the Keith factory?

A. I did.

Q. What was it?

A. What I called a hold-down.

Q. And its purpose was what?

A. To hold the shoe—keeping it from raising when you lasted heavy work.

Q. Why was it necessary to hold it down?

A. Because when we wiped up over the toe of the shoe the toe would lift off the toe-rest.

Q. Was that the difficulty with the Ideal machine?

A. Yes, sir.

Q. Wasn't it a fact that before you invented that hold-down and improved it the Ideal machine could not commercially successfully last men's shoes?

A. No, sir; it could not. As I understand your question, you mean all kinds of men's shoes?

Q. Yes. The operation of pressing over the leather lifted the last right up?

A. Yes, sir.

Q. That was the defect with the Ideal when it worked on anything except very light leather?

A. Yes.

Q. You invented something that held the last down in place?

A. Yes.

Q. Did you ever take out a patent on it?

A. No, sir; I wanted to.

Q. Where were you working when you invented that?

A. In Mr. Keith's. I put them on all of Mr. Keith's machines, and then put them on Douglas' when I went there.

Q. Did you also invent something else that held or that brought the wipers in around the counter?

A. Yes, sir.

Q. Did you get a patent on that?

A. Yes, sir.

Q. When did you get that out?

A. I don't think I got the patent out until 1905—something about then.

Q. When did you invent the improvement and attach it to any machines, either in Keith's or Douglas'?

A. I should say it was—I shall have to guess at it—I should say about 1901 or 1902.

Q. What was the necessity of this device which brought the wipers in around the counter?

A. I can explain it better by showing you. They used a very heavy counter at that time (the witness illustrating by reference to the heel of his own shoe), and the heel band would not bring the corners of the counters in.

Q. The heel band of the Ideal machine?

A. Yes; would not bring the end of the counters in. I made a something that would bring them in. I don't know what they called it after it was patented.

1086 Q. Have you got your patent with you?

A. Yes, sir; I think so. I had it this morning.

Q. I show you what purports to be United States patent No. 946,708, and call your attention to the drawing attached to it headed "Snow Lasting machine—application filed September 5, 1905"; is that a drawing showing the device which you invented for pressing in the counters?

A. Yes, sir.

Q. To attach to the Ideal machine?

A. Yes.

Q. And it consisted of these two arms which operated to press the counter in. When was that device attached to the Keith and Douglas machines?

A. I don't know; if I remember right, I think I put one on Mr. George E. Keith's, on one of his machines, to try it, before I left there.

Q. It was while you were there that you thought the thing out?

A. Yes.

Q. Now, did anybody else get out a patent on an improvement of your hold-down device?

A. Yes, sir.

Q. I show you what purports to be United States patent No. 947,818, and call your attention to the drawing attached to it, which is entitled "E. F. Heffernan, hold-down attachment for lasting machine." Does that drawing show the hold-down device that you got up?

A. Yes, sir; the same thing, only of course there was more to it; but it is the same principle.

Q. It was your principle?

A. Yes, sir.

Q. And it was the device that you attached to the machine?

A. It was.

Q. You say, Mr. Snow, that there was more to it than the drawing shows; you mean more to it in the drawing than there was in the device?

A. Yes, sir. This (indicating on drawing) presses down a little different way from mine; mine went with a lever. That is all the difference there is—the same thing exactly.

1087 Q. The same principle?

A. Yes, sir.

Q. Occasioned by the necessity of finding something that would hold the last down for the operation of the Ideal laster?

A. Yes, sir.

Q. Now, it was with these two devices and improvements attached that Mr. Douglas used the Ideal laster on men's shoes?

A. Successfully; yes.

Q. And without those the Ideal would not last men's shoes successfully, would it?

A. No, sir.

The United Shoe Machinery Company's Number Five laster embodies these two improvements, which we were using from 1902 to 1905.

(The illustration of the device for pressing the counter is marked "Defendants' Exhibit 338." The illustration of the

hold-down device originally got up by the witness and perfected by Heffernan is marked "Defendants' Exhibit 339.")

The patent on the attachment which presses in the counter was assigned by me to the United Shoe Machinery Company and is embodied in their Number Five lasting machines.

Direct examination resumed:

I do not remember that Mr. Keith added any Ideal machines to his factory while I was there. He was using the Ideal machines on men's welt shoes when I first went there. I added my hold-down attachment at different times during my stay. I put on the first one a very short time after I went there.

1088 Q. During that whole time before that attachment was put upon the Keith machines he was lasting men's welt shoes on them, was he, or not?

A. I suppose so. I wasn't there.

Q. And how long had he been lasting men's welt shoes on those Ideal machines before you went there?

A. I couldn't tell you anything about that.

Q. Had you, or not, been around his factory?

A. Not for some time.

I put the heel attachment of which I spoke on one of his machines, but I do not remember whether I put it on any others. He used all of his Ideal machines in lasting men's shoes during the entire year which I spent there, although, as far as I remember, only one had attached to it my device for pressing in the counters.

Q. Now, when you speak about not lasting men's shoes successfully, state what you mean.

A. I mean that if you have got to go over a shoe two or three times, when it isn't necessary to go over it but once, that it is not a successful machine—not a successful operation.

Q. That is, it doesn't do it as rapidly as the machine with the attachment?

A. No, sir; and my experience has been that manufacturers don't look at anything as very successful unless it is pretty swift.

Q. So that that is what you mean by successfully done?

A. Yes, sir.

Q. By going over it two or three times, it was done all right?

A. No; it wasn't done all right then. The more you wipe up a toe the worse it is. * * * You take it on patent leather, you couldn't wipe it only about once or twice. If you do, you take the enamel off.

Q. So the work of the laster was improved by these attachments?

A. Yes, sir.

At the time when I went to Mr. Douglas' factory he had been making shoes for many years. When I went there none of those attachments were on his lasters. I put them on as quickly as I could get them on. I don't suppose it was 6 months before I put them on. During the time I was there and before I put them on the Ideal machines were being used constantly in lasting men's welt shoes.

Cross-examination resumed:

So far as I know, Mr. Douglas and Mr. Keith were the only people in the country who used the Ideal machines with this hold-down in connection with lasting men's shoe. I think it was these two improvements that changed the machine from an unsuccessful machine into a successful one.

1089 Direct examination resumed:

When I said the Ideal laster could not last men's heavy shoes, I meant long-legged boots, brogans, miners' shoes, and shoes of that character. Nothing could handle those shoes except the McKay-Copeland machines.

1090 FEBRUARY 4, 1914.

HAMPARS HARPOOTLIAN, witness for the United States.

My full name is Hampars Harpootlian. I live in East Weymouth. I work in the shoe factory of George E. Keith. From 1900 to 1910 I worked in the factory of the T. G. Plant Company. I was a side laster. I was there at the time they had the trouble about wages. I know Frank Morrison, Abram Sochat, and Charles Ross, who sometimes goes under the name of Charlie Gordon. I don't know him as Ross; I know him as Charlie Gordon. Morrison was working at the Plant factory in 1910. He left shortly after we had the matter up about the increase in wages.

(At this point the United States offered to prove by the testimony of Hampars Harpootlian, Peter Gostanian, and Asardu Astoorian that Frank Morrison, Abraham Sochat, and Charlie Ross paid to the above-named persons certain money during the year 1910 for the purpose of unionizing the employees of the T. G. Plant factory. The evidence was offered for the purpose of rebutting the testimony of the defendant that Morrison, Sochat, and Ross did not pay out money to employees in the Plant factory. The evidence was excluded on the ground that it was cumulative and a part of the United States' direct case and is not properly offered in rebuttal.)

(No cross-examination.)

1091 FEBRUARY 4, 1914.

FRANK MORRISON, witness for the United States, recalled.

I know Cross Johnson. He was working with me at the Plant factory in 1910. I talked with him about forming a union among the employees, and he attended meetings held for that purpose. I told him by whom I was employed to unionize the Plant factory, and what we wanted to do. He signed his name. We paid him fifteen dollars, upon his promise to help us out by getting names for us. He did not get any names, but even denied what he had signed. I never went near him—never told him to help me out. I didn't want anybody to help me out; so he said he was afraid of his job.

(No cross-examination.)

1092 FEBRUARY 4, 1914.

PETER GOSTANIAN, witness for the United States.

I live in East Weymouth. I am a shoemaker. I was working in the T. G. Plant factory in 1910. I was a puller over. I know Cross Johnson very well. I saw Cross Johnson at a meeting held for the purpose of trying to unionize the lasting room of the Plant factory.

(No cross-examination.)

1093 FEBRUARY 4, 1914.

ASARDU ASTOORIAN, witness for the United States.

My name is Asardu Astoorian. In 1910 I was employed in Plant's shoe factory. I was a toe laster. I know Cross Johnson. He was working in the factory at that time. I attended a meeting at 988 Parker Street, at which Cross Johnson was present. The meeting was held for the purpose of forming a union of Plant's employees.

(No cross-examination.)

1094 FEBRUARY 4, 1914.

OSCAR HEATH, witness for the United States.

My name is Oscar Heath. I live in Brockton. I am connected with the Boston Last Company, which manufactures lasts. We make an electric embossing machine used for embossing names on shoes, a backing press, which is used for putting backing cloth on leather, and a treeing machine, used for treeing shoes, and a post ironing machine. We do not make any machines used in connection with attaching the bottoms to the uppers of shoes, nor any eyeletting or clicking machines.

Cross-examination:

Mr. CHOATE. I want to call the court's attention to the fact that we did not claim that he made any bottoming machinery.

We claim that he made a backing machine, an embossing machine, a post ironing, and two treeing machines.

Q. You do make all those, don't you?

A. Yes, sir.

That is my catalogue which you produce. The single-handled iron which we describe as having been developed "for crowners and lasters in the bottoming rooms of shoe factories" is a tool which is used for taking the wrinkles out of the toes of shoes after they are lasted. That is not really bottoming work. We should call it a tool to perfect the work of the lasters. The machine described in our catalogue as "post" or "bench heater" is used for taking wrinkles out of turn shoes, and that class of work. That is an ironing operation.

1095 FEBRUARY 4, 1914.

ELMER W. WALKER, witness for the United States.

My name is Elmer W. Walker. I live in Brockton. I am connected with the Brockton Stay Company. We manufacture boot and shoe findings. We make some machinery for own use, and what we don't want we sell. We make a pasting machine which is used for pasting the tape onto the vamp in shoe factories. It is not used in connection with the bottoms at all.

Cross-examination:

Mr. CHOATE. The only thing that we claimed the Brockton Stay Company made was a pasting machine—Wheeler tape-pasting machine.

We make that machine—the Wheeler tape-pasting machine, occasionally; not very often, but whenever it is wanted.

1096 FEBRUARY 4, 1914.

GEORGE KNIGHT, witness for the United States.

My name is George Knight. I live in Brockton. I am a machinist connected with George Knight & Company, which manufactures machinery. We do not manufacture a heel-building machine, but fifteen or twenty years ago we did make a little foot machine for building up pieced heels. I can not say how many we have put out. We have not made any within the last fifteen years, and we do make a vamp-creasing machine which is used for creasing the vamp after the shoe is made. We used to make a McKay channeling machine, but have not handled any of them within the past fifteen years to any extent. Up to about eight years ago we made and put out a power gang eyeletting machine. We have not put out any within the last eight years. Twenty or twenty-five years ago we made a channel-laying machine. We formerly made a channel opening

machine, but I think we have not made any within the past eight or ten years. I now make the punch-tip machines named in defendants' Exhibit 321, in several models; models E, F, and G, and a punch, power tip; punch, hand tip, punch, foot power. They are principally used for perforating toe caps. I also make a feather-edge and shank-reducing machine, which is used for reducing the shank of the sole. I sell them to shoe manufacturers. I also make a lip-turning machine, which is used for turning the lip of the inner sole. We sell some of our machines to the United Shoe Machinery Company, any that they have call for—sell them through them; and the tip-punching machines that we market in foreign countries we sell through them.

Cross-examination:

1097 We sell to anyone who wants to buy, and the United Company among others. The Peerless Company now makes eyeletting machines which we used to make. We run a general machine shop.

Q. You are ready to make any kind of shoe machine that anybody asks you to make?

A. Any machinery that I find sale for.

Q. And are able to?

A. Yes.

Herbert J. Sinclair is a gentleman connected with the United Company. I know him. I wrote the letter which has been produced (letter No. 9 in defendants' Exhibit 321, addressed to the United Company, and marked "Mr. Herbert J. Sinclair"), offering to furnish tip-perforating presses (models E, F, & G), hand, foot, and power tip-punching machines, vamp creasers, feather edgers, lip turners, and K and K cementing machines. We do make all of these. We have made heel shaving, lining sticking, and heel building machines in the years I have been in business. I have been in business there 29 years, about. There was more sale for some of those machines years ago than there has been recently; we know how to make them, and are ready to make them if anyone asks us to.

The Peerless Company is making and supplying the eyeletting machines, which we formerly made, in quite large quantities. They are used by shoe manufacturers.

Direct examination resumed:

I dictated the letter which Mr. Choate showed me. We have made within a dozen cementing machines in the last five years. We employ from twelve to eighteen men, including clerks, and all the help.

1098 FEBRUARY 4, 1914.

FRED S. SPRAGUE, witness for the United States.

My name is Fred S. Sprague. I live in Brockton. My business is machine building. I am connected with Kimball Brothers & Sprague. We make a welt laying machine which is used only for laying the Arnold flex welt, which was invented by Mr. William B. Arnold. We sell it to shoe manufacturers. The United Company has no machine for performing a similar operation, so far as I know. We employ about eighteen men, but none of them are just now engaged in making this welting machine. We have put out not more than twenty-five or thirty in the past five years. Our principal business is making last turning machinery.

Cross-examination:

The letter dated May 17, 1913, to the United Company offering to sell them the Arnold flex welt layer, which is part of Exhibit 321, and is signed Kimball Brothers & Sprague, was written by me. The letter and the circular which follows on the next page of the exhibit are all right. We make the Arnold flex welt layer, of which I have spoken.

1099 FEBRUARY 4, 1914.

THOMAS BOSTOCK, witness for the United States.

My name is Thomas Bostock. I live in Brockton. I am a machinist. I manufacture a machine which builds the heel before it is attached. We have sold quite a number to the United Shoe Machinery Company and to other companies—anybody that wants them. The United Company makes a heel building machine, but it is not like ours. We make a rand-cutting machine, which trims off the end of the rand which is left projecting from the heel seat, in connection with the heeling operation; a tap-cutting machine, which can be used for most anything, a heel lift gouging machine, which gouges out the heel before it is put on the shoe, so that it fits the heel seat, and which also can be used by changing the knives for slashing McKay welts, making it a McKay welt slashing machine; a toe softening machine, which is used upon the upper, and a rand turning machine which turns up the rand, giving shape to the heel. We do not make a spring heel scarfing machine. We have handled them. We have bought them secondhand once in a while and resold them.

We have been engaged in business about seventeen years. In the past we have put out as many as one hundred heel building machines a year. We have not put out so many lately. The heel building machine business is not the principal part of our business. We build all kinds of machines. Any machine that

anyone wants, we build—embossing machines and sandpaper machines—any machines anyone wants. We build all kinds of machines to order. We do not build a welt sewing machine, an outsole stitching machine, a heeling machine, or a lasting machine. We employ about fifteen men.

1100 Cross-examination:

We have a general machine shop and facilities for building from patterns and drawings any kind of a machine anybody wants. We have a number of machines that we make right along. Our letter of May 12th, 1913, which I signed, and the two sheets which comprise our catalogue, relate to the machines which we are making right along. They are the toe softener, which we sell at four dollars and a half; heel lift gougers, at fifty-five dollars; cap cutters, fifty dollars; spring heel scarfers, sixty dollars; and turners, without bearing, twenty dollars, with bearing, twenty-two dollars; heel builders, straight mold and military mold, 10 % off; heel builder, six or more, 15 % off; rand choppers, with straight or gouge knife, fifty dollars; welt slasher, male and female, sixty dollars; rand cutter, thirty dollars; box toe press, two hundred and twenty-five dollars.

We have built these machines for outside parties and are ready to build them for anybody who orders them. The toe softener prepares the toe for lasting. The heel lift gouger gouges the heel after it is built, preparing it for attachment to the bottom of the shoe. Our tap cutter cuts taps which are part of the sole, the spring-heel scarfer scarfs spring heels—you do that on that same machine—and the rand turner operates on the rand, which is part of the heel seat.

Each of our machines performs an operation which is either preparing or finishing the bottom of the shoe before or after it is attached to the upper, or getting the upper ready for attachment to the sole.

Direct examination resumed:

The box toe molding machine is used for molding box
1101 toes. We have put out about twenty altogether.

Our heel building machines go both to shoe manufacturers and to heel manufacturers. I think the shoe manufacturers get the most of them. We have built a good many for the shoe manufacturers. We have built 30 for the Douglas Company.

1102 FEBRUARY 4, 1914.

CARL A. CARLSON, witness for the United States.

My name is Carl A. Carlson. I live in Brockton. I am connected with Carlson Brothers, who are sheet metal workers.

We make a toe softening machine used for softening the box of the shoe before it is lasted. We sell them outright to the manufacturers of shoes.

Cross-examination:

The purpose of the machine is to prepare the toe of the shoe for the operation of lasting. They are used altogether by shoe manufacturers, and are sold for six or eight dollars apiece. We have been in business a long time, and have supplied them in considerable quantities to anyone who wants them.

1103 FEBRUARY 4, 1914.

GEORGE D. HAZEN, witness for the United States.

My name is George D. Hazen. I live in Brockton. I am connected with the Hazen-Brown Company, cement manufacturers. We have cementing machines made for us, used for the purpose of applying a certain kind of a cement to the bottom of the sole in order to stick a tap. We sell the machine to the Cochituate Oilproof Company, which loans them to shoe manufacturers for the purpose of putting on their cement.

Cross-examination:

The Cochituate Company makes a cement, and the machine is devised for the operation of applying that cement. They rent that machine to shoe manufacturers, and make their profit out of what they get for cement. The machines are made for us, and we are supplying them to the Cochituate Company. A patent was applied for but I do not know whether it was allowed. I am a stockholder in the Cochituate Oilproof Company for which the machines are made.

1104 FEBRUARY 4, 1914.

FLOYD H. OGDEN, witness for the United States.

My name is Floyd H. Ogden. I am the New England manager of the Standard Sewing Machine Company, of Cleveland, Ohio. The machines made by our company which are mentioned in defendants' Exhibit 321 are not used in connection with the preparing or attaching of the bottoms to the uppers of shoes—not that I know of. They are all used in connection with the upper, so far as I know.

Cross-examination:

Formerly we made all of the machines shown on the list, but we do not now. I wrote the letter bearing my signature which has been introduced, and sent the attached circulars. I have been manager since the first of last March. I haven't had anything to do with the manufacturing end of the business in Ohio. The only machines which we now make are those

shown on the circulars. We have a stitching machine which has five different attachments for different operations—bellows tongue, button fly lining, button stay, eyelet row, eyelet stay and fancy. Each is a different kind of operation and there has to be a different fitting for each one. We have a seaming foxing machine. The list of machines in defendants' Exhibit 321 comprises descriptions of operations which the several machines can do by various attachments and modifications. I am not very familiar with the machines themselves. I have never worked in a shoe factory. I was not with this company before I came to Boston.

1105 FEBRUARY 4, 1914.

ALBERT G. BREWER, witness for the United States.

My name is Albert G. Brewer. I live in Natick. I am a machinist and inventor. I make a McKay welt-slashing machine, which I sell to shoe manufacturers. I have not put out more than ten altogether, of which the last was sold a year and a half, or two years ago. I employ one man. I also make other machines.

Cross-examination:

The letter dated May 23, 1913, bearing my signature, is my letter. That letter shows an illustration of the double rapid welt slitter, and says: "Which we can sell you for $100. Prompt delivery can be made on receipt of order." I attached the printed circular which was introduced in evidence. The machine mentioned, the double rapid welt slitter, is the machine about which Mr. Gregg just asked me. We have not made any for a year and a half.

1106 FEBRUARY 4, 1914.

JOHN M. TOWER, witness for the United States.

My name is John M. Tower. I am connected with Tower Brothers, of Hudson, Mass., machinists. We make a buffing machine which is used for sandpapering the bottoms of shoes. We have been at it a great many years. We put out perhaps ten of them last year. They go to shoe manufacturers. We also make and put out perhaps ten or a dozen sole-cutting machines in a year. We make a heel-scouring machine. We used to make and put out a good many heel-scouring machines, but we have not done a great deal with that for the last few years. We put out perhaps two or three last year. We formerly made a stamping machine for stamping the name on the bottom of the shoe, but we do not now. We make stripping machines for anybody who wants them, but they have gone out of fashion. We make a rotary edge-setting machine. I formerly made a good many, but, as they make better work, they

don't use them. We make a heel-trimming machine and an edge-trimming machine, but have not put out a great many. They have most all gone to cobblers.

We employ from twelve to eighteen men, and do a machine, millwright, and piping business, principally machines.

Cross-examination:

We have a country machine shop in which we do most anything that comes along. The letter dated May 17, 1913, bearing my signature and describing the machines which we make was written by me. The machines which we make are comprised in the list read by Mr. Gregg. The high-speed buffer, bevel-
1107 ing machine, edge trimmer, edge scourer, stamping machine, heel trimmer, rotary edge setter and power stripping machine all have to do with finishing the sole or the heel after it is attached to the upper, or getting it ready to attach to the upper. The vamp cutter and the dieing-out machines are for dieing out the sole.

1108 FEBRUARY 4, 1914.

JOHN BULMER, witness for the United States.

My name is John Bulmer. I live in Boston. I am superintendent of the J. S. Holt Co. (Inc.). That company is engaged in the business of secondhand shoe machinery. We have built no machinery since I came with them, on January 1, 1912. I couldn't say what machines the company built before January 1, 1912. We do not now build a stamping machine or a welt-indenting machine. We have handled a few secondhand machines of these types since January 1, 1912; not over two or three welt-indenting machines. We do not make a McKay sewing machine—that is, since January 1, 1912—but have handled not over a dozen of them at second hand since then. We get them generally from shoe manufacturers; secondhand shops.

Cross-examination:

When I went with Holt I was working in Boston in a machine shop. The letter which was produced, dated May 2, 1913, and signed J. S. Holt & Company (Inc.), was written by Mr. J. S. Holt, who is now dead. I recognize the signature. I do not know anything about the letter.

McKay sewing machines are to be had from about all the shoe manufacturers. They pass through our hands more or less frequently, and we rebuild or repair them and furnish them to others. We have no difficulty in getting them at any time.

Direct examination resumed:

I do not know whether there is any difficulty in selling them or not. I am not the salesman; I don't know anything about the selling.

1109 FEBRUARY 4, 1914.

VALENTINE H. McDOWELL, witness for the United States.

My name is Valentine H. McDowell. I live in Saugus, Massachusetts. I worked for two months for the McDowell Shoe Machinery Company. That company was in existence from March 26, 1912, to March 26, 1913, at which time it went out of business complete. The McDowell Shoe Machinery Company did not put out or handle a heel-beading machine while I was with it, or a heel-trimming machine. I was with it only two months, in the early part of its existence.

Cross-examination:

My father is living, and is in the shoe-machinery business. He has been in the shoe-machinery business for a great many years, longer than I can remember. His name is Alexander. His business was conducted under his own name until the corporation was formed, then for a year that same business was run as the McDowell Company, and after the corporation was wound up by some court proceedings he carried it on again in his own name. I am as familiar as anyone except my father with the business and the machines which he put out. I cannot say one way or the other as to whether he or the McDowell Company put out a heel-beading or a heel-trimming machine.

1110 FEBRUARY 4, 1914.

ALONZO H. HATCH, witness for the United States.

My name is Alonzo H. Hatch. I live in Malden. I am New England manager for the Union Special Machine Company. The overedge machine and the butting machine which are mentioned in the list under our company's name which appears in Dfts. Exhbt. 321, are used for preparing an imitation Gem insole. They are not used for fastening the bottoms of shoes. A foxing machine is used for staying the seam on a fox shoe. That is a certain style of fittings of the upper. Except in the cases I have mentioned, the machines made by our company are used in connection with the uppers only, with the further exception that we have fitted up one machine especially for making a corded welt. We did that for the Walpole Supply Company and W. B. Arnold.

I know that there is a Metropolitan Sewing Machine Company. I think its business is confined chiefly to the fabric trade, although there are some of their machines, I understand, being used in the shoe factories; in fact, I have seen one only in a shoe factory. That is used for closing the heel lining.

Cross-examination:

The imitation Gem insole to which I referred is patented by a man named Ham. I am not familiar enough with it to know whether it is used in connection with a welt shoe or not. The different machines named in the list which our company makes perform operations in fastening together the different parts of the upper and the lining. They assemble it in preparation for the lasting operation. They are practically all machines for performing operations for preparing the upper for the lasting operation.

1111 Direct examination resumed:

Our machines have nothing to do with adjusting the upper over the last.

1112 FEBRUARY 4, 1914.

FRANK P. EMERSON, witness for the United States.

My name is Frank P. Emerson. I am treasurer of the Shawmut Machinery Company, of Boston. Our company manufactures a hand cementing machine, which is used on the vamp; the cementing machine, hand lining, is the same machine; and a power hammer for hammering down the folds of the uppers, any folded work on the uppers. We also make a tip-scouring machine, which is used on patent leather tips, and a rubbing machine, a power machine for seams—a seam rubber. The company began a year ago last July to manufacture McKay sewing machines, and put the first one out last June. Three of them are now out on trial with shoe manufacturers.

The tip-scouring and pasting machines are sold to shoe manufacturers, and are used in connection with the uppers. We make no machine except the McKay sewing machine, which is used in connection with bottoming, and until a year ago we did not make any McKay machines.

Cross-examination:

The McKay machine which we are making is an improved machine of recent design. We call it the most up-to-date McKay machine on the market. Formerly Walter Pearson was making it for us. But our Mr. Buck framed the ideas. We never handled the old type of machine or dealt in second-hand machines. The old type was the basis for our machine.

The tip-scouring machine fixes up cracks or scratches in patent leather which come in some part of the operation of connecting the bottom with the upper, I suppose, and reenamels it if it is necessary.

1113 FEBRUARY 4, 1914.

GEORGE H. DIEHL, Jr., a witness for the United States.

My name is George H. Diehl, jr. I live in New York City. I have been connected with the Fortuna Machine Company since

its organization in 1903. We do not build a heel-building machine. We do manufacture skiving machines for skiving the uppers, vamps, and all parts of shoes. It is not and can not be used in connection with the bottoms of shoes.

Cross-examination:

I am president of the Fortuna Company, and have been since 1903. The picture shown in Dfts. Exht. 321, on page 63, is a picture of one of our skiving machines. We began making that model about three years ago. We have been making our model C skiving machine, a regular model, since 1903. Referring to the advertisement appearing in the "American Shoemaking" of July 6, 1912, reading "We will exhibit a full line of our machinery at the Sixth National Shoe and Leather Market Fair to be held at Boston, July 10–17. We shall also show a new heel-building machine," that is signed "Fortuna Machine Company," which is my company. We exhibited that heel-building machine, which was owned by a man named Geiger, and which we proposed to handle if it was a success. It has not been successful, and we have done nothing with it.

1114 FEBRUARY 4, 1914.

WENDELL P. BOSWORTH, witness for the United States.

My name is Wendell P. Bosworth. I live in Brockton. I am connected with the Brockton Heel Company, manufacturers of heels and toplifts. We do not make a heel-building machine, but we make a sanding machine, and we have been making for the last two months a heel-log measuring device, which we lease to shoe manufacturers and heel manufacturers, more to the former. The United Shoe Machinery Company builds no machine for performing a similar operation, to my knowledge. We manufacture no other machines except the two named, but we have other machines made for us.

Cross-examination:

We supply shoe manufacturers with a heel-log building machine, which is made for us. It has a long tube, in which lifts are forced and compressed by a plunger, making a long log of leather. The log is sliced off into blanks by an automatic machine. The blanks so sliced off are used in building heels, which are sold to shoe manufacturers. It is one way of building heels. The letter which you produce bearing my name, dated May 29, 1913, giving prices on the Bosworth heel-log building and slicing machine was signed by me. The log builder and the log slicer are illustrated in defendants' Exhibit 321 (No. 43). The sanding machine is used for evening the butt in the end of

the log after it has been severed by the automatic slicer—that is, preparing the heel before it is put on the shoe.

1115 Direct examination resumed:

There is a great deal of difference between a heel-log building machine and a heel-building machine. The heel-building machine nails the heels individually in a form.

1116 FEBRUARY 4, 1914.

J. HAMMOND STEWART, witness for the United States.

My name is J. Hammond Stewart. I live in Lynn. I am connected with Stewart Brothers, who have been manufacturing counter machinery for approximately twenty years. We manufacture finishing machines, counter end; a molding machine; a skiving machine; a waxing and rolling machine, and a wetting machine. The United Shoe Machinery Company makes machines to perform only one of the operations for which the machines which I have named are designed, that is, the counter-skiving machine. The finishing machine which I have named is used for finishing the end of a counter, the waxing and rolling machine for putting the counter into shape before the molding operation, and the molding machine for molding the counter. The wetting machine is used for getting the counters in temper. The United Shoe Machinery Company's counter-skiving machine is different from ours. Ours skives by two knives; the United skives with one knife and a form.

I am the owner of our concern. I have never offered to sell my business to the United Company, nor has anyone at the present time connected with my concern had authority to enter into such negotiations.

Cross-examination:

I purchased the business two years ago in February. Previous to that time perhaps it was offered to the United Company by my brother. The machinery which we manufacture is used for making and adjusting molded counters to the last. The operations of the counter wetting and molding machines are necessary to prepare a molded counter for the lasting operation.

1117 FEBRUARY 4, 1914.

LEOPOLD C. TAPPEY, witness for the United States.

My name is Leopold C. Tappey. I am a salesman. At one time I handled machinery for the Keighley Company, of Vineland, New Jersey. I was with them during the year 1911, placing their inseam trimmer with shoe manufacturers in New England. At that time they made a cleaning machine, a finish-

ing machine, and an inseam trimmer. I did not have anything to do with the finishing and polishing machines. The cleaning machines are used for cleaning the uppers and edges of the soles. I put out about twenty of the trimming machines during 1911, on trial, with the understamding that if they were satisfactory the manufacturer bought them. I have had no connection with the company since 1911.

(The United States here introduced in evidence in connection with the Keighley Company, whose catalog was introduced by the defendants as part of their Exhibit No. 321, an agreement entered into September 21, 1912, between the United Company and the Keighley Company with respect to the marketing of the Keighley Company's inseam trimming machine for the purpose of showing that the Keighley Company, as to the machine covered by the agreement, was not in competition with the United Company. The agreement was admitted for that purpose and was marked "Exhibit No. 275" by the clerk.)

1118 BROWN, J. Of course it must be limited in its use to that purpose.

Mr. GREGG. I am only offering it for that purpose, your honor, to show their control.

Three of the rotary cleaning machines manufactured by the Keighley Company were put out by that company during 1911.

(No cross-examination.)

1119 FEBRUARY 4, 1914.

EBEN W. THOMAS, witness for the United States.

My name is Eben W. Thomas. I am treasurer of the C. S. Pierce Company, a corporation engaged in the manufacture of shoe specialties. We make certain machines for our own use. (4650) The C. S. Pierce Skiving Machine Company markets a skiving machine which is made for it. It is used for skiving upper leather, but it is not used in connection with the bottoms.

Cross-examination:

The Pierce skiving machine which we market is shown on the page cut from the "Superintendent and Foreman" of April 24, 1912, which is a part of defendants' Exhibit 321.

1120 FEBRUARY 4, 1914.

THOMAS WORSENCROFT, witness for the United States.

My name is Thomas Worsencroft. I am a welter, and am now in the employ of Howard & Foster, of Brockton. In the latter part of 1890 I was working for the Rapid Lasting Company, and was employed by Mr. George W. Copeland. I worked for him about a year and a half. My duties were to instruct men to operate the Rapid laster. That was the machine which

was succeeded by the Ideal lasting machine. I never was agent for the Ideal laster. I never installed the Ideal in any factory. The only difference between the Rapid machine and the Ideal was that the Rapid machine worked by foot power, and the Ideal by steam power. I worked with an Ideal machine for three or four years in the factory of the Duquesne Shoe Company, of Pittsburgh, Pennsylvania. They were making men's Goodyear welts. I was with them from 1897 to 1901, and they used no lasting machines except the Ideal. Before that I worked in the factory of Whitman & Keith, of Campello, Mass. They had been using the Copeland Rapid machine, and while I was there they installed one Ideal machine when it first came out. The first machine made was put in there for experimentation. There was not much difference between the machines. If a man could run one, he could run the other. It was in that factory that I learned what the difference was. Whitman & Keith were making a $3.50 to $5.00 men's welt shoe. I worked there a little over a year, and went from there to Pittsburgh. I did not know anything about the Chase machine at that time, but afterwards saw its operation in factories.

I am familiar with the work of the Ideal machine on men's welt shoes. I have not worked on the Chase machine. The Ideal did better work on men's welt shoes than the Chase machine. As to rapidity, you could do as much on one machine as on the other, according to the operator. The Chase
1121 machines were in George Snow's factory at the time I was working there, in 1893. I worked for six months for S. A. Crooks Company, of Hopkinton. They used the Rapid laster on men's McKay shoes. In 1891 and 1892 I worked at the factory of John Hanan & Sons, of New York City. They were making high-priced shoes, all welts and hand sewed. They used several Rapid lasters on their welt work. I was at George Snow's factory in Brockton in 1893. He made men's welt shoes. He used both the Rapid and Chase lasters. I worked there nearly a year. I do not remember when the two attachments that the witness Snow described were incorporated in the construction of the Ideal laster. I don't remember anything about it.

Cross-examination:

I am now welting shoes at Howard & Foster's, in Brockton. I have been running a welter off and on since 1894. That has been my principal work. As to whether I have been doing any lasting since I began to run a welter, I have instructed others in my capacity when I was in Pittsburgh. I ran lasters—the

Ideal machine. I was a foreman in the factory at Pittsburgh from February, 1897, to February, 1901. They had one Ideal laster and no other kinds when I went there in 1897, and did all of their lasting upon it. They were not then turning out more than fifty pairs a day. They made men's fine welt shoes. Their product was a light shoe of the better grade, and was not a heavy or work shoe. They gradually increased their number of lasting machines until about two years after I went there they had five in all. Then they were making an even better and more expensive shoe. They are now out of business. That is the only factory where I have had actual experience with the Ideal laster since 1894. I never ran a Chase lasting machine, and I never saw both Chase and Ideal used in the same factory, but I have
1122 sewed shoes that have been lasted on Chase machines.

When I went with Howard & Foster they had Chase machines, but they did not and do not now have Ideal machines. In my direct testimony I compared the work which I had seen done on the Ideal with work which I saw done in 1912 on the Chase. For eight years—until the last year and a half—I have sewed shoes after they had been lasted on the Chase machines. I was comparing what I saw a few years ago at Howard & Foster's with what I saw ten or twelve years ago at Whitman & Keith's. The Ideal machine did better work than the Chase, because it left the toe smoother. It was made with a wiper, and not with a pad. It did not push the inner sole back onto the last.

On later Ideal machines which I saw, there was a device for holding down the last. Those were the ones which I saw the last time I was at Whitman & Keith's. I can not say how many years it is since I have seen an Ideal machine. It is quite a while. The last time I worked on one, other than as an instructor, was when I was in Pittsburgh between 1897 and 1901. I never worked on a Chase machine or instructed workmen upon it.

Q. All you saw was the result of work that you thought came from a Chase machine?

A. Yes; worked after it.

1123 FEBRUARY 4, 1914.

WILLIAM P. WHITMAN, witness for the United States.

My name is William P. Whitman. I am a shoe manufacturer. My factory is at Campello. My product consists entirely of men's medium and fine welt shoes. I have been in business since 1883. The capacity of my factory is about twelve hundred pairs. We obtained one of the first Ideal machines put out, and machines of that kind have been in our factory ever

since. We are still operating six or seven of them and are using them in lasting men's welt shoes. We have also been using the Number Five lasting machines for 3 or 4 years. I think we obtained our Ideal machines, all but two, before the formation of the United Shoe Machinery Company. We leased them at first and then bought them from the Goodyear Company.

I am president and treasurer of the company. I spend most of my time at the factory. I see very little difference between the quality or the speed of the work done by the Ideal and the Number Five lasting machine.

I used the Eppler welt machines. We operated one of them for several years. We obtained it before the formation of the United Company. We never had more than one. We continued to operate it until after the United Company bought them out. I consider the Goodyear welt system the best system; it did better work on the shoe. We used the Eppler machine for three or four years along with the Goodyear and then exchanged it for a Goodyear machine.

Cross-examination:

Mr. Snow, who has been a witness, was in our factory and did work for the Lasting Machine Company. I do not think he attached any hold-down to our lasting machine. The hold-down which we have is known as the Heffernan. I 1124 think we have had it since the spring of 1909. I think that was the first time we had any hold-down on our machines at all. I do not think we had any device for pressing the counter into the shank devised by Mr. Snow. I am not really a machinery man, and attachments might be put on the machines by the superintendent without my knowing it. With the hold-down device the Ideal machine is very similar to the Number Five.

Q. Now, those improvements were rather essential to making the Ideal machinery satisfactory, weren't they?

A. Since the high toe came in; yes, sir.

Q. Now, the high toe came in some twelve or fourteen years ago, didn't it?

A. Not the extreme high toe, I don't think.

Q. No; not the extreme high toe which you are making now and have made within a year or two, but the higher-toed lasts were coming in ten or twelve years ago?

A. Yes, sir; I should say so.

Q. Mr. Howard showed me one which is marked "1899 to 1901." Does your recollection agree with that, that toes were of that shape as far back as that?

A. I should think that was rather high for that time, in my opinion.

Q. Well, they were beginning?

A. Yes, sir.

Q. And have become more and more exaggerated ever since?

A. Yes, sir.

Q. And it is a problem with the old-fashioned Ideal laster to last those high-toed shoes without the last slipping up?

A. Yes, sir.

Q. Unless you have this hold-down?

A. Yes, sir.

Q. And without the hold-down you can't last those high-toed shoes as a good shoemaker wants to have it?

A. Not satisfactorily; no, sir.

The shoe which we make is a medium fine grade, gentlemans, walking shoe, and is not a heavy work shoe. It is of medium weight leather.

Our output was larger in 1899 than it is now. We were making some McKay shoes. We were then making from nine hundred to a thousand pairs of welt shoes and a total production of fifteen hundred pairs. Twelve hundred is our largest capacity. The Ideal machines which I now have are the same machines which I obtained by lease, and what I had in my mind as an arrangement by which I got them was some provision in the lease with reference to the relations between me and the owner of the machines. I don't know what that was. I have always supposed that we owned the machines. I understand there is a contention there. I have never looked the lease up. For many years I paid a royalty. As to whether there has been any transaction between us and the lessor of the machine since the lease was executed by us, whatever the transaction was my father made it. I am not familiar with it. My information on this point as to whether I hold it under lease or otherwise is not very definite, except that I always understood that we owned the machines.

1125 FEBRUARY 4, 1914.

EDWARD F. HEFFERNAN, witness for the United States.

My name is Edward F. Heffernan. I am employed by Whitman & Keith. The Whitman is the Mr. Whitman who has just testified. I have been employed by Whitman & Keith for seventeen or eighteen years. At first I operated a lasting machine and for about six years I have had charge of the lasting department. I operated an Ideal lasting machine for twelve or fourteen years, but have never operated any other kind of lasting

machine. When I first went with Whitman & Keith they were running the Copeland Rapid, as well as the Ideal lasting machine. The difference in the work between the two is not great. The carriage slides back on the Ideal, where the other drops down. The Ideal is steam power and the Copeland is foot power. I began to run an Ideal laster for Whitman & Keith around 1898 or 1899. At that time there was no attachment on the machine to hold down the toe, nor was there anything to press in the leather around the counter except what we called a heel pad.

I am the Edward F. Heffernan who is the patentee of U. S. Patent No. 947,818, dated February 1, 1910, for what is called an appliance for holding the toe down. I never saw the appliance which has been described by Mr. Snow. Our machines had no such appliance until that which I invented was attached to them. That was first used in 1909 or 1910. I had myself lasted shoes for twelve years without any appliance of that kind. Seven Ideal machines and four or five Copeland machines were used in the factory at that time.

We have had an attachment which we called a heel pad on our machines for over twelve years. It is a little piece of brass used for squeezing in the counter. We have the attachments designated by the figures 34, 33, 32 and 30 in Patent No. 946,708 issued January 18, 1910, to S. Snow.

1126 We installed three Number Five machines three years ago, and are using them and seven Ideal machines. The same operator can get as much, if not a little more, from the Ideal machine as from the Number Five. The quality of the work depends upon the operator. I claim the Ideal is a little faster. I can run both machines myself, and I claim the Ideal is a faster machine. Anything that is lasted on a Number Five can be lasted on an Ideal machine. The Number Five is heavier and stronger, but I think the Ideal by a stronger construction could be made to last any kind of shoes.

Cross-examination:

I was observing particularly what was going on in our own factory with reference to the use of Ideal machines, and paid no attention to the difficulties other people might be having with them, or what improvements or attachments they added to them, even though it was in the same town.

Q. Now, why did you put on this hold-down?

A. Because of the bowing of the tips and flattening of the heels.

Q. What does "bowing of the tips" mean?

A. Pulling up the tip of the shoe, pulling that cap line out of true, because there is nothing to hold the shoe down on the toe rest.

Q. What happens to the heel?

A. It flattens the back of the heel—flattens it in, because the heel pad had to take all the pressure of lasting the toe.

Q. Why were you bowing the tips?

A. Because it was up off the toe rest.

Q. Was that a new condition which had just developed?

A. Mostly since the high toes came in.

Q. Are both those things imperfect workmanship?

A. Yes; considered so.

Q. When you say "we," you mean even good operators using the Ideal machine were doing that?

A. Yes.

Q. Then it is a condition of the operation of the Ideal machine upon high-toed shoes?

A. Not the Ideal altogether, but the No. 5 would do the same thing.

Q. The No. 5 has a hold-down, hasn't it?

A. Yes, after I got mine. I had heard of Mr. Snow's device before I invented my own. An operator told me about it, but said that it was not working very successfully. I do not know of any factory where Snow's device was used. Snow was working at Whitman & Kieth's when I went there, and taught me to use lasting machines.

1127 We now have three number 5 machines and seven Ideals which are working. We have two Ideals which are not in use at all. We gave up using them about a year ago. We were then running more shoes through our factory than we are now. We did not put on any machines to take the place of the two Ideals that are now idle. We did not get the number 5's to take the place of some Ideals. We increased the business from about 700 to 1,200 pairs. I wanted more machines so I took two Ideal machines first. They gave me my choice. At one time we had nothing but Ideals. Then I got three number 5's and then I stopped using two of the Ideals.

Direct examination resumed:

About four years ago when we started in doing more business, I was given my choice between the Number Five and the Ideal, and I took two Ideals. Before the hold-down appliance was added, it required much more trouble and attention to last a shoe properly. I had to keep after the operators all the time, regulate the machine myself, put pressure on the heel pads to see that I

could hold them down there and make them press on the shoe while they were trying to last the toe.

Q. Could they last as many shoes on the machine without the appliance as with it?

A. I don't think so; no, sir; couldn't do it.

Q. Then that helps some in the speed of the machine?

A. Helps the speed and helps the bother. I don't have any bother. I don't have one tip bowed in a month now, whereas before I would get a dozen shoes in a case.

The appliance on the No. 5 is substantially the same as my appliance.

1128 FEBRUARY 4, 1914.

WARREN F. MCELROY, witness for the United States, recalled:

My full name is W. F. McElroy. I live in St. Louis and am a shoe manufacturer. I was engaged in that business for fourteen years prior to 1899 with the Hamilton-Brown Shoe Company and was general superintendent for the last nine years. Prior to the formation of the United Company our machines were repaired very largely by our own machinists. A representative of the old companies would call about once every thirty to ninety days—rather more of a social call than anything else. As to whether the service with respect to keeping machines in repair has improved any since the formation of the United Company, since the United was formed they have practically kept men in the factory. Prior to that time we kept our own machines in repair. As to the difference between the service when we furnished our own machinists and the service since the United Company was formed, we kept the machines running before; they have kept them running since. They furnish very much more service than we ever put on to our machines—than we ever used before. They have a corps of men to come into your factory at any time of the day and all times of day to look over the machines.

As to comparing the expense of keeping the machines in repair prior to the time the United Company was formed and after it was formed, I couldn't give anything authentic on that at all, because I have made no comparison of figures.

We used three Ideal lasters on women's welt work in 1896–7.

I have been engaged in the shoe manufacturing business since 1884, and was connected with the Hamilton-Brown Company about twenty-seven years. I am now general superintendent with Burrow, Jones & Dyer. As to whether I have anything to do with the machinery, just a general overlooking of the factory. That also was true during the fifteen or sixteen years I had a

similar position with the Hamilton-Brown Company. I do not think it necessary for a factory to have all its machines from one manufacturer in order to get efficient service.

1129 We had no trouble in the Non-Royalty factory which I operated from May to February, in keeping our machines going, without the service of the United Company. The machines were new and our experience in there was not sufficient, perhaps, to test out the machines as they might have been later. We got those machines from various companies other than the United Company—no two from the same company. In 1905 I was with the Hamilton-Brown Company. That company had lasting machines on which the leases had been canceled and the machines turned over to it. That is, we bought the machines. It had other lasting machines on leases from the United Company. I can not say whether that company had any lasting or heeling machines on unrestricted leases of the United Company.

I understand that the Universal Machine Company and the Champion Machine Company are one and the same concern. I have been in their factory. Both companies are located in the same building. We used in our Non-Royalty factory some Universal machines obtained from the factory where the Champion machines are made.

Cross-examination:

The Hamilton-Brown Company used the Ideal machine for lasting women's shoes. It used the Copeland Rapid for lasting men's shoes until 1904.

Direct examination resumed:

I know nothing of the American Shoe Machinery and Tool Company. The James Clark Leather Company are engaged in the business of shoe findings; they make no shoe machinery.

The Hamilton-Brown Company from 1900 up to 1910 were the largest shoe manufacturers in the world.

Cross-examination:

I am the son-in-law of Mr. Brown, senior, who was a member of that firm. Mr. Brown, who testified here for the defence, was my brother-in-law. I was connected with that company

1130 before my marriage—as general manager of the manufacturing in St. Louis—4 factories. I was general manager from 1892 till 1911. Then came the Non-Royalty Co. and then I went with another concern. The output of the Hamilton-Brown Company was about 200,000 pairs of shoes weekly, or about 25,000 to 30,000 pairs per day at our highest point. Since then several other manufacturers have passed them. I had

charge of their four St. Louis factories. When I first went with them they were making about three hundred pairs per day.

Q. Now, as general manager, were you in sole charge of the supplying of the factory with machinery?

A. All, except finally they built other factories—they built another factory, and, while I helped to equip it—while I did equip it, after the superintendent of that factory, which was the Sunlight——

Q. Was there a St. Louis factory that you had charge of?

A. I had charge of four St. Louis factories.

Q. You had to do with the getting of machinery for that purpose?

A. Yes, sir.

At that time the United Shoe Machinery Company was practically the only source of supply of machinery with which I was familiar. Until I started out to equip this Non-Royalty factory I had not made any particular inquiry through the United States to acquaint myself with the persons who were engaged in manufacturing shoes. Before that I had dealt practically altogether with the United Company. When we started to equip a non-royalty factory the object was to get machines on which there was no royalty, no matter of whom it was obtained. Our intention was to keep as far away from royalty machines as possible, and that was the distinction we were then making. That was the occasion for our making inquiries with reference to who supplied shoe machinery. My investigations to get machines for the Non-Royalty Company began about the first of December, 1911, about the time this suit began, and I was engaged in getting machinery until probably June of 1912.

Direct examination resumed:

I know nothing of the Consolidated Rotary Rounder Company, of Cincinnati, or of the Elliott Manufacturing Company, of Boston. The Louis G. Freeman Company, of Cincinnati, are engaged in handling shoe findings and machinery. They have several machines. They are angaged in the shoe machinery business, but I do not know to what extent. They have a St. Louis branch, and the machines I obtained I got through that branch. I had from them a heel tacking machine used in conjunction with the laster.

I have never heard of the C. E. Hardenbrook Company, of Philadelphia; the Progressive Shoe Machinery Company, 1131 of Minneapolis; J. D. Randall Company, of Cincinnati; Theodore Ringenbach, of Cincinnati; the Shoe Manufacturers Supply Company, of Newark, New Jersey; the Supply

Machinery and Tool Company, of New Haven, Connecticut; or the Specialty Shoe Machinery and Tool Company, of St. Joseph, Missouri.

The Landis Machine Company, of St. Louis, makes harness machinery. I do not know whether it is engaged in making shoe machinery.

I have heard of the Atlas-Werke-Pohler and Company of Leipzig, Germany. I don't know whether they do any business in the United States. I have never heard of the Adrian and Busch concern of Frankfort am Main, Germany, of Dilley & Sons, Northampton, England, Heaton's (Ltd.), of Leicester, England. I don't identify A. H. Johnson, of Leicester. I have heard of Gimson & Company, of Leicester, but I do not know whether they do any business in the United States. I have visited the works of A. Johnson, of Paris, France. I do not know whether he does any business in the United States. I have never heard of Keats & Bexen (Ltd.), of Stafford, England, of Keats Machinery Company, of Germany, H. Keeper, London, England, of the Job Lee Premier Works, of Kettering, England, of Lintz & Eckhardt, of Berlin, Germany, of Livingston & Doughty, of Leicester, England, of Stephen Lucking, of Chester, England, of Mills & Company, Ltd., of Kettering, England, or Mobbs & Lewis, of Kettering, England. The Moenus Machine Works of Frankfort, Germany, manufacture shoe machinery and tanning machinery; I do not know whether they do business in the United States. I have heard of the Nollesche Works, Germany, but do not know what business they are engaged in. The Northampton Machinery Company (Ltd.), of Northampton, England, are engaged in the shoe machinery business; I do not know whether they do any business in this country. I never heard of A. T. Ralphs, of Leeds, England. The Standard Engineering Company, of Leicester, England, make some types of shoe machinery; I do not know whether they do any 1132 business in the United States. The Standard Rotary Machine Company, of Rushden and Northampton, England, manufacture stitching, lasting, and leveling machinery. It did a small nonroyalty business in this country. We bought lasters, stitchers, rough rounder, and leveler from them. They had no agent in this country at that time. I never heard of Summers & Sons, of Wellinborough, England, of John Thacker, of Leicester, England, of Timson, Bullock & Barker, of Kettering, England, of the Universal Shoe Machinery Company, of Northampton, England, of the Velocity Machines Company, Ltd., of London, England, of Ward & Gent, of Northampton, England, or of Whitehead & Company, of Dunkinfield, England.

Cross-examination resumed:

As to whether, if I know anything about these people, I ought to know about the people in my own city, I should say so; yes sir. I have lived in St. Louis a good while. I said that the Landis Manufacturing Company, of St. Louis, made harness machinery. As to whether I know that, I know it from their advertisements. I have never seen their catalogue or been in their place of business, which is on North 25th Street, St. Louis, Missouri. I have seen their harness machine. I know they make harness machinery. I don't know whether they make anything else. I don't mean to say that they don't make shoe machinery.

1133 FEBRUARY 5, 1914.

PEARL E. SELBY, witness for the United States, recalled.

My name is Pearl E. Selby. I am connected with the Selby Shoe Company, of Portsmouth, Ohio. I was engaged in the shoe manufacturing business before the formation of the United Company and have been engaged in that business down to the present time. With respect to keeping our machines in repair, I would prefer to furnish my own service.

The operation of the lasting machine has nothing to do with the operation of the welt sewing machine. The operation of the welt sewing machine has nothing to do with the operation of the outsole stitching machine. The operations are performed by separate operators on different machines. The same is true of heeling machines. I do not know whether in 1905 I had any lasting, heeling, or metallic fastening machines from the United Company on what are designated as unrestricted leases.

(No cross-examination).

1134 FEBRUARY 5, 1914.

WILLIAM F. FOWLER, witness for the United States.

My name is William F. Fowler. I live in Cincinnati, Ohio. I am connected with the Krippendorf-Dittman Company, shoe manufacturers. I am a stockholder in the company and am superintendent. I have been with the company substantially all of the time since January 26, 1873.

Prior to the formation of the United Shoe Machinery Company agents of some of the constituent companies would visit the factories in a given city perhaps once a month. The old Goodyear Company had offices in Cincinnati part of the time where their agent was stationed. The service given by the United Company is now better than that which was rendered prior to the formation of the United Company. We formerly had 4 or 5 Ideal lasting machines, which we got before the formation of the United

Company. We used them on women's welt shoes, which are the only kind we make.

(The United States then offered to prove that the witness had obtained two Ideal lasting machines from the Goodyear Shoe Machinery Company on a lease under which he paid five hundred dollars for each machine at the time of getting the machines and was not obligated to pay any further royalties; that a few years after the United Company was formed he turned those machines back to the United Company, receiving an allowance of two hundred and fifty dollars on each of them and took Consolidated hand method machines in their place; that thereafter applying for an Ideal lasting machine, he received one from the United Company but was compelled to pay a half cent per pair for its use; that as a result the witness now pays approximately three hundred dollars per year royalty, and he takes the machine for a period of seventeen years, for the use of the machine which has an output of from two hundred to two hundred and fifty pairs per day, instead of having it for five hundred dollars for a full term. The evidence was excluded on the ground that the lease should be produced. The witness stated that he did not have the lease with him, but that it was in his office.)

1135 Cross-examination:

We never used our Ideal lasting machine on anything but women's shoes.

1136 FEBRUARY 5, 1914.

A LE ROY HAMMOND, witness for the United States.

My name is A. Le Roy Hammond. I live in Haverhill. I am connected with the Becket & Hammond Machine Company. We make a wood heel top lift trimming machine, used for trimming the top lifts of wood heels. We sell it to wood heel manufacturers—to anyone that makes wood heels. We employ about ten men.

Cross-examination:

The catalogue which you show me on the reverse side of page 175 of defendants' Exhibit 321 is our catalogue. Some shoe manufacturers use wood heels in making some kinds of shoes. We sell our machines to any shoe manufacturers who want them. We have been in business eight years.

1137 FEBRUARY 5, 1914.

AARON BECKMAN, witness for the United States.

My name is Aaron Beckman. I live in Lynn. I am in the machine business. My company is the Beckman Machine Company, which makes heel-finishing machine. We have put out about nine machines since we have been in business, that is

to say, since the first of May, 1913. I made heel-finishing machines before that, but didn't have a shop of my own before. We do not make a heel-seat beading machine, and have never handled them. I employ about two men.

Cross-examination:

The advertisement which you show me from defendants' Exhibit 321 is my advertisement and the cut on the reverse side of page 111 illustrates our heel burnishing machine. That machine also had a heel beading wheel, and the same with another device was a heel beader as well as a heel burnisher; I did furnish to the market a heel beading machine. I was putting this machine out as long as two years ago. At that time I was not working for myself.

Four of these machines have been put into Creighton's factory in Lynn, displacing those of the Xpedite Company. That is, it does the same kind of work as the United Company's Xpedite machine.

Direct examination resumed:

I don't know whether that company has given up the use of the United's machines. As far as I know that company may still be using all of the United Company's machines which it had. I don't know. I have put out nine of these heel-seat beading machines of this later type. I employ two men.

1138 , FEBRUARY 5, 1914.

HARRY H. BECKWITH, witness for the United States.

My name is Harry H. Beckwith. I live in Boston and am connected with the Beckwith Box Toe Company. We make a toe softening machine, which is used to soften the box toes in the lasting operation. We have been engaged in business about ten years, and we have put out about two hundred of these machines. They have all been put out in the past two years, and about one hundred of them in the last year. The United has a machine for performing a similar operation.

Cross-examination:

We got up this machine only two or three years ago. Since then we have placed two hundred machines. It prepares the box toe for the lasting operation.

1139 FEBRUARY 5, 1914.

HARRY I. ILLINGWORTH, witness for the United States.

My name is Harry I. Illingworth. I live in Swampscott. I have been in business since 1895. I am manager of the Boston Machine Works Company. We manufacture shoe machinery, special machinery, and tools. We make the Monarch and the Boston beading machinery for beading the tops of shoes, the

Julian cementing machine, used for cementing the soles of shoes, and the New York fold cementing machine, used for cementing the edges of skived leather before folding. We have put out during the last ten years seven or eight hundred Julian cementing machines. They have gone to shoe manufacturers. We make folding machines, the Booth folding machine, used for folding the edges of the upper; the Boston machine, for similar work of a heavier character; a foot-power machine for small pieces, such as backstays; and a vamp machine, which is a special machine for folding the vamp. We make the Rochester lacing machine for lacing the upper to give the proper opening before being lasted, and marking machines for marking leather; a lining pricking machine; a snipping machine, used for snipping the edges of curves of the upper leather before folding; a tip scouring machine, and a flap-slashing machine, used for slashing the curves in the shank of the insole. We have put out perhaps fifty flap-slashing machines. They were principally sold in this country. The Julian cementing machines were nearly all—about 90%—sold in this country. We formerly made a hook-hole punching machine, but do very little on it now. It was used to prepare the upper for setting of the hooks. We handle the Union Seam rubbing machine, but do not make it. We have the exclusive sale of it. It is used for pressing the seams of the uppers. The British United Shoe Machinery Company handles certain of our machines in England and the German United Shoe Machinery Company handles them in Germany.

1140 Cross-examination:

We market all our own machines in this country. Our place of business is in Lynn. We occupy about 25,000 feet of floor space. We have a treasurer's office in Boston, and branch offices in St. Louis, Cincinnati, Rochester, and Auburn, Maine, where we sell our goods. We employ about a hundred people at our Lynn factory.

We make an insole pinking machine which pinks the inner sole of a pointed shoe preparatory to attaching the sole to the upper.

The catalogue which has been produced, which is part of defendants' Exhibit 321, is our catalogue, and we put it out. We hold ourselves ready to supply all of the machines named in it.

Direct examination resumed:

We employ 100 men, more or less, altogether. It is difficult to state how many men we employ in connection with our cementing machine, because sometimes we make up a lot of them, and we might not make any more for several months.

1141 FEBRUARY 5, 1914.

CHARLES G. WIRTHS, witness for the United States.

My name is Charles G. Wirths. I live in New York. I am secretary and treasurer of the Larsen Machine Company. We make a welt and out-sole lockstitch machine. It is used principally by shoe repairers. We have never sold any to shoe manufacturers. It could be used by shoe manufacturers but it can not be speeded up as high as the United Company's machines.

Cross-examination:

The advertisement which was produced to the court was an advertisement of our Larsen Ever-Ready stitcher. The statements which we make in that advertisement regarding it we believe to be justified. There is no reason why it could not be used for making new shoes except that it is not as fast as a Goodyear stitcher. That is considered by manufacturers a serious difficulty.

Direct examination resumed:

The advertisement which was produced was inserted by the Engstrom Company. As to whether or not it was our advertisement—well, practically, no. We have never known of one of these machines being used in a shoe factory.

Cross-examination resumed:

The advertisement does advertise our machines.

Q. And in so far as we are concerned, who didn't know who paid for it, we were perfectly justified in understanding that that was your advertisement?

A. Exactly, sir.

1142 FEBRUARY 5, 1914.

CARL A. MATSON, witness for the United States.

My name is Carl A. Matson. I live in Lynn. I am connected with the Matson-Hoyt Machine Company. We make a heel-finishing machine. We have put out about a dozen, all within the last three years. They go to shoe manufacturers.

Cross-examination:

We advertise the Matson heel burnisher as shown on the reverse of page 8 of defendants' Exhibit 321. We furnished one of these to the Non-Royalty Company in St. Louis. We sell directly to shoe manufacturers.

Direct examination resumed:

We employ two men.

1143 FEBRUARY 5, 1914.

CHARLES T. HILLIKER, witness for the United States.

My name is Charles T. Hilliker. I live in Lynn and am connected with Quarmby & Hilliker, machinists. We make a Knox power blocking machine which is used in blocking out or cutting

the leather for soles. The machine shown in our catalogue, which is a part of defendant's Exhibit 321, is what we call our sole cutter. We have put out approximately thirty of these machines since we have been in business. They go to sole manufacturers. We have put out perhaps ten or twelve lighter machines which have gone to shoe manufacturers. We now handle them only when we can pick them up as second-hand machinery. We formerly made a Knox heel-compressing machine but have not manufactured any for the past seven years. The machine in the corner of our letterhead, which is in defendant's Exhibit 321, is a sole cutter and a blocker. Then there is another machine very much like this which we call a dieing-out machine and a blocking machine besides. We have made a sole-molding machine, but have discontinued its manufacture. We make a Knox rolling machine used for rolling out all kinds of sole leather. We have put out about fifty of them since we went into the business in 1904. About one-third of them have gone to shoe manufacturers, the rest to people who furnish stock for shoe manufacturers. We make and have put out at least seventy-five stripping machines for stripping side leather, to be used in the blocker. About one-third of them have gone to shoe manufacturers. The others have gone to outsole makers. We do not make a Knox splitting machine. We buy them of the Knox Splitting and we also handle them as second-hand machinery. We have put out about thirty; about half go to shoe manufacturers. We employ from seven to ten men. The United Shoe Machinery Company makes a stripping machine, a blocking machine, a molding machine, and a rolling machine.

1144 Cross-examination:

The letter on page 10 of defendant's Exhibit 321 giving prices on the machines about which I have been asked is our letter, and our catalogue is that which was produced and is attached on the reverse of page 11. We have the patterns and could make any of the machines named if we were asked to. We do not advertise.

Outsole makers make soles for shoemakers. Quite a number of our machines go to outsole makers.

We have made between one hundred and fifty and two hundred dinking machines. We sell them everywhere.

Direct examination resumed:

About one-third of them went to shoe manufacturers.

Cross-examination resumed:

The others go to persons making parts for shoe manufacturers, such as soles or linings or uppers.

1145 FEBRUARY 5, 1914.

RICHARD H. LUFKIN, witness for the United States.

My name is Richard H. Lufkin. I live in Boston. My business is the manufacture of vamp folding machines. I have been in business for thirty-five years. The machinery has nothing to do with the bottom of shoes. I have talked with Mr. Bayley, who is connected with the United Shoe Machinery Company, with respect to selling my business to that company. He asked what our price was, and he afterwards said it was too high; he could not do anything with it.

Cross-examination:

The letter and advertisements which you show me (defendants' Exhibit 321, page 84) are mine.

1146 FEBRUARY 5, 1914.

FRED F. FIELD, witness for the United States.

My name is Fred F. Field. I am a shoe manufacturer connected with the Fred F. Field Company, of Brockton, of which I am president, and Field Brothers & Gross, of Auburn, Maine, of which I am vice-president. The Fred F. Field Company manufactures men's welt shoes. They have been in business for fifteen or sixteen years, beginning with a capacity of four hundred and eighty pairs a day, which has gradually been increased until within the last four or five years we have been making twenty-five hundred pairs. I formerly used the Eppler welt machine, and at one time had as many as eight of them. At the same time we had Goodyear machines. We never had any Eppler outsole stitchers. We kept the Eppler machines in our factory from 1902 or 1903 until a year ago. We got them after the organization of the United Company. We had 5 or 6 Epplers when I ceased using the Eppler machines, because I felt the model K welter was a better machine. While we were using those Eppler machines, we were, during all the time, using some Goodyear welters. I have been general manager, and have had oversight of everything. I thought the Eppler machines sewed a flatter seam than the Goodyear, and required less filling. There was not much difference in speed between the old Goodyear and the old Eppler machine. As to which of the machines our factory preferred—the old Goodyear machine or the Eppler machine—we put in the Eppler because we thought it was better. As to our reason for ceasing to use the Eppler and taking the Goodyear machines before the model K machine came out, the seam sewed by the Eppler was a little weak as compared with the Goodyear, but it was a flatter seam, and we were wanting to try the new machine as soon as it was out. We

had tried another model in the Maine factory first. In our Brockton factory we make men's high-grade shoes.

Cross-examination:

We were in business making welt shoes before 1902 and at that time used Goodyear machines and had used them
1147 for some time. The United Company supplied us with Eppler machines in 1902. The United Company furnished us whichever we chose and furnished us with service. They treated us just as well when we had the Epplers as when we had the Goodyear, and took just as good care of the other machines. We did not make any turn shoes nor any women's shoes. I do not know anything about whether an Eppler machine can't make a turn shoe satisfactorily. We never had an Eppler stitcher, but did that work with a Goodyear machine. We used the Eppler for one seam and the Goodyear for the other. The Eppler machine sewed a somewhat looser and weaker seam than the Goodyear. If the United Company hadn't furnished us with a Goodyear machine for doing outsole stitching, we couldn't have made a shoe with our Eppler machine. We could only have sewed the inseam by machine and would have had to stitch the outsole by hand. We did not ask for a set of the Eppler machines for doing the entire operation of welt sewing. We just asked for the welter. I don't think we had any Eppler auxiliaries. That is, we had five Eppler welting machines which were assisted and helped out by the Goodyear machines that completed the operation of uniting the sole of a welt shoe to the upper. At that time we felt we liked the Eppler welter better. I determined to change the Epplers for Goodyears some little time before I actually made the change, but was advised by Mr. Willson to wait until they got the model K ready, although he was ready to change.

Direct examination resumed:

We wanted to make the change because the newer machine was faster, and we thought it did a better job than the Eppler. That was our only reason for making the exchange. I made the exchange about four or five years ago. At that time they had a new model out, but Mr. Willson advised me not to put that in, as they had been working on another one, for which he thought I had better wait. I never have used any of the Eppler machines except the welter.

1148 FEBRUARY 5, 1914.

GEORGE STRONG, witness for the United States.

My name is George Strong. I am a shoe manufacturer. My factory is located in Weymouth. I have been making men's

high-grade welt shoes for about thirty years. We make about fifty cases a day. About 1892 I began using the Eppler machines. At first we used the out-sole stitchers, sewing our welts by hand, our grade of shoes. Afterwards we used the Eppler welter also. We are using the Goodyear outsole stitcher to-day. The Eppler stitching machine did satisfactory work on our grade of shoes. I think we got along better with it than if we had used the welter at that time. We welted by hand. We began using the Goodyear welting machine about 1900. The old firm dissolved and we had a new corporation, and I think we put in—in 1895 I think we put in Eppler stitchers and welters then. We used Eppler welters and stitchers from about 1895 to about 1900. Then we made a trade with the United Company and let them have our Eppler system, welters, stitchers, and some other machines, and took Goodyear machines. It is pretty hard for me to go into the practical part, because that was not my part of the business. I was not a factory man at all. I just looked after the correspondence and accounts and the sales. The machine had been used a long time, and were practically gone by, and we had a chance to turn them in to the United Company for the new rapid stitcher and welter, and we did so. I think the Goodyear machines do better work than the Eppler machines. Of course, I think the Goodyear welter is better than the Eppler welter was. You can do more work on the rapid stitcher, of course. You get a flatter seam on the Goodyear welter. In the Eppler the lock was on a different plan. I think our Eppler machines were leased. I do not know the amount of royalty, whether it was three or four cents.

1149 FEBRUARY 5, 1914.

JOHN JORDAN, witness for the United States.

I am a laster, and am now employed by the W. L. Douglas Company, for whom I have been working for seven or eight years. I formerly worked on the Chase laster at the George E. Keith factory. I do not remember in what years—a couple of years off and on. I also worked for three or four years on the Copeland rapid laster, and afterward with the Ideal lasting machine, which I ran for about ten years, when they put in the Number Five; that was about three or four years ago. I am working on the Number Five machine now.

I lasted men's high-grade welt shoes on the Chase, the Copeland rapid laster, and the Ideal lasting machines. I think the Ideal did better work than the Chase on men's shoes. It got a better shoulder and smoother toe, and one thing and another. I worked on the Ideal machine when it first came out 10 or 12 years ago,

in the factory of Whitman & Keith. It was installed therefor experimentation. That particular machine did high-grade work on men's welt shoes. As to whether the most work could be done in a day by the Ideal or by the Chase—well, I don't know. That is left with the operator, but I would say that the Ideal was a little speedier.

Cross-examination:

The speed with which an operator can last shoes depends a good deal upon the shape of the last. The introduction in recent years of the crooked last and of the high-toed shoe has
1150 slowed down the work of the laster a good deal. I do not know that a comparison of the present machine with the older machine is fair. They were using easier lasts when I worked on the Chase machine. There were no crooked lasts then. Now there is a right and left last, which requires a different kind of machine. The high box toe requires a differently adjusted machine.

When I worked on the Ideal machines at George Keith's they did not have the hold-down on the machine. My recollection is that I left Keith's about eight years ago, in 1906. I operated the Ideal and not the Chase laster at Keith's. I used the Ideal machine for five or six years. I know Stephen Snow. I do not remember any device such as he described on George Keith's Ideal machines. I have run machines at Douglas's with that attachment eight or nine years ago. They didn't use it but a short time. It did not hold the shoe. I do not remember that the hold-down attachment was ever used at George Keith's.

Direct examination resumed:

I never saw Mr. Keith lasting any shoes.

The Snow attachment was used for only a short while at Douglas's. They were then taken off, and the machines then used without the attachments.

1151 FEBRUARY 5, 1914.

JOHN N. MURPHY, witness for the United States.

My name is John N. Murphy. I am an operator on lasting machines. I first was employed about twenty-three years ago in the factory of Perkins & Joyce, at Brockton. In that factory I operated the old Copeland. That was not the Rapid machine nor was it the old McKay & Copeland. It was a strap machine. We were making a fair grade of men's welt shoes. I next worked at Taylor's factory at Campello, operating the same machine. That was in 1893. They were making a medium grade of men's welt shoes. From there I went to the factory of Whitman & Keith where they were making the same kind of shoes—welt

shoes; I guess some of them were a higher grade. I operated there the strap machine and the power machine, or the Ideal. The power machine was the Ideal machine. When it came out with power first they called it the power machine. I afterwards worked at Douglas's where I operated the Ideal machine. I never operated a Chase machine at all to amount to anything; I may have tried a shoe on it. They had some in Douglas's factory while I was there. I tried to operate it once at Cross', but could not make it go. I can not say whether the Chase machine was used on welt work at Douglas's. I didn't see much difference between the work of the Chase and the Ideal machines. The operator on the Chase was away down the other line, lasting McKay work. I have used the Number Five lasting machine. In regard to a job, I guess the two machines were about the same. I thought the Ideal was a quicker machine. I have not operated a lasting machine for nearly two years. I am making shoe forms now.

(No cross-examination.)

1152 FEBRUARY 5, 1914.

FRANCIS O'KEEFE, witness for the United States.

My name is Francis O'Keefe. I am foreman of the lasting room for Stacy, Adams & Company. I have been working in that capacity for two years. I have been engaged in lasting shoes for about eighteen years. I first worked with L. Boyden & Company, Newark, New Jersey, in 1896. They were making high-grade men's welt shoes. I used a Chase machine there for about six years. From there I went to James A. Banister & Company, of Newark, New Jersey, who made men's fine welt shoes. They also used the Chase lasting machine. From there I went to Syracuse, New York, where I worked for Nettleton. He also made men's fine welt shoes, and used the Chase machine. From there I entered the employ of Stacy, Adams & Company, in Brockton, and worked there for five years operating Chase lasting machines. I have worked a short time on the Number Five, but have never operated the Ideal. Stacy, Adams & Company never owned any Ideal machines to my knowledge. I have used the Chase lasting machine in lasting women's shoes at the factory of L. Boyden & Company. They made a line of women's shoes for a short time—then discontinued making them. Chase lasting machines were successfully used in lasting those shoes. The Chase could not be used on a high-toed shoe like those which have been out in the last three or four years. It was just as good as any other kind of machine I know of for regular work. Banister had six Ideal machines, on which

men's fine welt shoes were lasted. He used them during all the three months I was working there. He also had six Chases, on which I worked. A workman on the Ideal turned out about the same amount of work as that which was done on the Chase. As to whether I examined the work to see whether it was as good; well, it all had to be good; it wouldn't go if it wasn't.

1153 Cross-examination:

Each of the five factories at which I worked used Chase machines for lasting men's shoes. In the Banister factory men's shoes were lasted on Ideal machines in the same room where I was at work, although not done by me. I have picked the work up and looked at it, but gave it no particular attention—had no responsibility for it. All the factories where I worked make the very highest grade of machine-made shoes. I don't know whether they are the best grade of machine-made shoes which are in the market. It is true that Newark is famous for its fine shoes, and this is one of the factories that made fine shoes.

At none of the places at which I worked, except L. Boyden & Company, were women's shoes made. L. Boyden & Company used Chase machines for lasting women's shoes. They discontinued making women's shoes. I have lasted shoes made on crooked lasts on Chase machines and on the Number Five. On the Number Five the part which holds the heels is movable, so that it can be adjusted to a crooked last. The similar part on the Chase machine is stationary. That would not make any difference.

1154 FEBRUARY 5, 1914.

MILTON S. FLORSHEIM, witness for the United States, recalled.

My name is Milton S. Florsheim. I testified last spring. I reside in Chicago. I am connected with the Florsheim Shoe Company, manufacturers of men's shoes. I have already testified that at the time the United Company was formed I was manufacturing shoes and was using both the Eppler and the Goodyear machines. We used both the Eppler and the Goodyear welt-sewing and outsole stitching machines, and I think we used the Eppler auxiliary machines, at least their rounder. In our opinion the work performed by the Eppler welt-sewing machine was as well done as the work performed by the Goodyear machine. The same thing was true of the outsole stitching machine. The best shoes made at that time or as good as any made at that time were made on the Eppler machines. We made a high-grade shoe at that time, though not so high priced as the one we are making to-day. As to whether the character of the work, in

my judgment, was the same—practically so. Prior to 1899 we had not made any large quantity of shoes; we had only made a limited quantity, but had experimented with the machines and had satisfied ourselves that as far as their work was concerned we could get along with them as well as with the Goodyear. That is about all the progress that we had made up to the time the United Company was formed. Right after the United Company was formed we stopped using the Eppler machines. We got satisfactory service both from the Goodyear Company and from the Eppler Company. We also got satisfactory service from the companies furnishing the lasting machines. We had Chase and Copeland Rapid machines at that time, and both companies furnished us satisfactory service. There was no substantial difference between the service which was furnished before the consolidation into the United Company and that rendered by the United Company afterward. We have never made any effort to take care of our own machines.

1155 Cross-examination:

I can not say when I got my first Eppler machine. My memory is that we got them between a year and six months before the United Company was formed. As to whether the fact is that the first Eppler machine we ever had was shipped to us November 21, 1898, I don't know. I do not deny it. All the opportunity we had to know about the service of the Eppler Company was between the date of that first machine, whenever it was, and February, 1899. Prior to February, 1899, we had a wire grip slugging machine. I do not know the name of the company from whom we got it or our other slugging machines. It may have been one of the machines of the McKay Shoe Machinery Company. I don't know. I can not say how long we had it before the United Company was formed. As to what I had to do with the machinery at that time that gave me an opportunity to know about the service those companies gave us, I had practically charge of our little business at that time.

Q. Where was the McKay depot or agency out there that furnished service to your factory?

A. I don't know. I think Mr. Forsyth at that time, the present manager of the United Company's office in Chicago, represented one of the slugging machine companies that we did business with.

Q. Just wait a moment. I say, where did the McKay Company have its office or agency which furnished you that service?

A. I don't know; somewhere in Chicago.

Q. Well, do you know that?

A. Well, they had a representative there.
Q. Do you know that?
A. No; I can't say that I know that.
Q. I want to be sure that you do know what you say and not have you merely guess at it.
A. I am not guessing.
The Eppler Company also had a representative in Chicago; kept parts there; and someone was present who could repair machines. The Goodyear Company also had an agency in Chicago. The United Company's services improved as time went on and became very much more efficient, and after they had gotten started and organized and got their service systematized it was very much better than what was given before, and it has been improving right along; their service has been good.

1156 Q. Of course this is the fact, that where one agency, one corps of men furnish the service for all your machines, it is obvious that it is easier and simpler and quicker for you as a manufacturer to call upon that one central depot than it is to call upon six or eight or a dozen different people.
A. That necessarily must follow by itself; but, on the other hand, let me say this, Mr. Choate: That the way the United Company run their business, if a man that repairs heeling machines, for instance, is in the factory, and we need a man to repair the Goodyear, he won't repair the Goodyear machines. We have got to send again and get another man. They divide their service up to such an extent that it takes a great many more men.
Q. But you send to the same place for them all?
A. Yes, sir.
Q. And they have a good many more men?
A. Oh, yes; they give us good service, if that is what you are trying to get at; there is no question about it.

1157 FEBRUARY 5, 1914.

IRA E. FLETCHER, witness for the United States.

My name is Ira E. Fletcher. I am superintendent of the F. M. Hoyt Shoe Company, of Manchester, New Hampshire. I have been with them four years. I worked for W. L. Douglas from 1902 to 1910. In 1902 Mr. Douglas was using both the Eppler and the Goodyear welt machines. I think he had about twelve Eppler machines and eight Goodyear machines. I am not sure how long he retained the Epplers, but I think for about three years after I went there. I do not know how

long he had been using them before I went there. They ran side by side in the same factory. The Goodyear welter was the best. Douglas was using the stitcher as well as the welter. The Goodyear stitcher we considered the best. As to what I had to do with the stitchers, I had full charge of the making room. The Eppler welter put the loop on the inside and the Goodyear welter put the loop on the outside. Both the shoes made on Eppler machines and those made on the Goodyear were put on the market and were all sold as welt shoes. They were not kept separate.

Douglas was using Ideal lasting machines, and I think he had fifty-four of them in 1902. He was then making men's welt shoes only. He afterwards got Consolidated hand method or "nigger-head" machines. We used both machines on men's welt shoes. He used the "nigger-head" on the cheapest grade of shoes. He got no other kind of lasting machine while I was there, except within the last few years they put in some of the Number Fives, the latest and most improved machine.

1158 Q. I want to draw a comparison between the work done by the No. 5 and the Ideal.

A. The No. 5 is superior to the Ideal.

Q. In what respect?

A. You have a hold down and also a finger that holds the shoe to the extreme point of your inner sole, which is a benefit.

The hold down had been put on Mr. Douglas's Ideal machines by Mr. Snow, I think in 1905. Before that the Ideal had been used for a number of years without the attachment. Mr. Snow's appliance was successful in a way. I worked for Cushman & Company, of Auburn, Maine, from 1894 to 1901. The first year I was there I was a welt operator, and the remainder of the time I was a foreman. We used the Goodyear welting machines and Ideal lasting machines. Toward the end of my time there they had twelve Ideal machines. They had no other kind of lasting machines in the room in which I was working. In that room, men's Goodyear welt shoes were being made. They tried the Chase lasting machine in that factory for six weeks or two months, but took it out because they could not get as good results on the Chase as on the Ideal.

Cross-examination:

A man familiar with the Ideal laster might find it difficult at first until he was thoroughly trained to do as good work with the Chase laster, and vice versa. The high-toed last began to be used about 1904, I should say. It was started by George Keith in Brockton. I do not pretend to be accurate as to the date, but I know that was where it originated.

I know Stephen Snow, and I know he put hold-downs on the Ideal machines in Douglas's factory. The hold down held the shoe firm. The purpose was to hold down the toes on especially hard stock—heavy stock. Without the hold down
1159 the Ideal machine continually allowed the toe to rise, which caused the tip to pull ahead and to bow. That frequently required repeating the operation and was likely to cause injury, especially in lasting patent-leather shoes. The operator wouldn't get as good results. I wouldn't say that the hold downs were put on more than half of the Ideal machines in the Douglas factory. Douglas did not do any lasting by hand at the time I was with him.

The Number Five machine was a development from this idea of the Ideal with these attachments on it.

Douglas gradually changed from the Eppler to the Goodyear machines, because with the Eppler machine there was trouble with the loose seam. When you beat out the shoe there would be more or less looseness, which caused a weak seam. It would make a bad shoe. That was the particular reason for changing over from the Eppler to the Goodyear. That change was the result of the business judgment of the men who were responsible, because we thought the Goodyears were the better machines.

The shoes made on the Eppler machines and those made on the Goodyear machines were not kept separate. Shoes that were welted and stitched on the Eppler machines were put into a case with shoes welted and stitched on the Goodyear machines with no distinguishing mark whatever.

Direct examination resumed:

Mr. Douglas made some patent-leather shoes at that time. They were lasted on the Ideal machines. I never heard any particular complaint about the way in which they were lasted.

Cross-examination resumed:

Cushman might have had a good many Chase machines in the McKay room, with which I had nothing to do. He did not have any in the Goodyear room.

1160 FEBRUARY 5, 1914.

HARRY G. McMURRAY, witness for the United States.

My name is Harry G. McMurray. I am superintendent of H. B. Reed & Company, of Manchester, New Hampshire. I have been with that company for three years. I worked for Ara Cushman & Company from 1891 to 1893. I do not remember whether they used an Ideal lasting machine. They were then using the Goodyear welt machines. In 1906 and 1907 I was in the factory of Field Brothers & Gross at Auburn, Maine; they were using eight Eppler welt machines. At that time they were

not using any Goodyear welt machines. They made men's Goodyear welt shoes. They used the "nigger-head" lasting machine, but the last of my being there they put in Chase machines. I do not know of their using any Ideal machines and think they changed the Epplers for the United's new machine shortly after I left.

(No cross-examination.)

1161 FEBRUARY 5, 1914.

JAMES H. CUNNINGHAM, witness for the United States, recalled.

My name is James H. Cunningham. I am connected with the Stacy, Adams & Company, in which I am interested. I have been connected with that company in various capacities for thirty-nine years. I was formerly superintendent. We make the highest grade of men's welt shoes. We first made welt shoes by hand. About thirty years ago we began making welt shoes by machinery. At first we used Goodyear machines. The Eppler was not out then. As to whether we ever used any Eppler machines in our factory, we did; yes, sir. In 1899 we were using Chase lasting machines. We never used the Ideal machines.

(No cross-examination.)

1162 FEBRUARY 5, 1914.

HARRY G. MCMURRAY, as a witness for the United States (recalled).

I wish to correct my testimony with respect to the welt sewing machines used by Field Brothers & Gross in 1906 and 1907. The machines used by that company were not Eppler machines, but were Briggs welting machines. That is all I know about them.

Cross-examination:

I know the machines were called the Briggs welting machines and that is all I do know. As to how that name happened to be given to those machines, I understood at that time that Briggs was the inventor.

Redirect examination:

I do not know whether they got them from the Goodyear Company.

(At the suggestion of Mr. Fowler, it was then stated by Mr. Choate that it was his understanding that the machine referred to as the Briggs machine was in fact the Goodyear model E.)

1163 FEBRUARY 5, 1914.

IRVING A. HADLEY, as a witness for the United States (recalled).

My name is Irving A. Hadley. I was formerly connected with the firm of Kimball & Hadley, which I have testified sold

out to the United Shoe Machinery Company. I have formerly testified with reference to an endeavor to sell awls and needles to the firm of Churchill & Alden's. Mr. Belcher, who has testified here, was the person with whom I talked. I saw Mr. Roberts of the E. E. Taylor Company, and he is the man I talked with regarding slugging awls. Regarding the needles, it was another party; I don't recall just who it was. I do not recall the names of either Mr. Tierney or Mr. Bryant. The conversation in which as Mr. Belcher testified I told him I was going out of business was not in connection with Kimball & Hadley, the co-partnership which was sold out to the United Company, but was with respect to the Kimball Hadley Corporation. It was after the copartnership had been disposed of to the United Company and the corporation had been formed, and between the time of the decision of the single justice of the State Supreme Court and the time that the injunction was made permanent, that I went and told them that there was a possibility of our going out of business and advised them to stock up.

(No cross-examination.)

1164 FEBRUARY 5, 1914.

WILLIAM P. BARTEL, witness for the United States.

My name is William P. Bartel. I reside in Waltham, Mass. I am connected with the American Lacing Hook Company, which manufactures lacing hooks for shoes. The only machine which we make is a hooking machine for placing the lacing hooks in the uppers of shoes.

(No cross-examination.)

1165 FEBRUARY 5, 1914.

FRANK A. BRADFORD, witness for the United States.

My name is Frank A. Bradford. I am manager of the Holmes Leather Working Machinery Company, of Cambridgeport. We make a sole-leather roller, used for finishing sole leather. It is sometimes sold to shoe manufacturers. Most of them are sold to tanneries. The machine has been on the market for eight or ten years. We have sold them to the tanning department of shoe manufacturers. We sold to the W. H. McElwain Company, tanning department; sold some to George E. Keith several years ago.

Cross-examination:

The letter which you produce as part of defendants' Exhibit 321, dated May 20, 1913, and signed by me, quoting prices on machines for smoothing heavy stock, is our letter. That letter appears on page 34 and cuts of the machines appear on page 35 of that exhibit. A good many of the large shoe manufac-

turers have tanning departments, where these machines are used for dealing with leather that is mostly used for sole leather, like the heavy grades of leather which have to be rolled out before the soles are made.

1166 FEBRUARY 5, 1914.

EDWIN E. BARTLETT, witness for the United States.

My name is Edwin E. Bartlett. I reside in Hyde Park. I am connected with the Harlow Shoe Finishing Machinery Company, which makes a heel-finishing machine. I have put out about one hundred and thirty-seven, of which all have gone to shoe manufacturers. Mr. Harlow, who was president of the company, is in the employ of the United Company. I put out personally a heel-seat beading machine. The Harlow Company has nothing to do with it. I build that personally.

Cross-examination:

The advertisement which you produce as part of defendants' Exhibit 321 is our advertisement. It is on page 143.

I do not know what Mr. Harlow does for the United Company. He is connected with the Marlboro office. He has no active part in running the Harlow machine business. The United Company owns no stock or other interest in the Harlow Company and has nothing to do with it. We have been putting out machines for about six years.

1167 FEBRUARY 5, 1914.

WILLIAM J. YOUNG, witness for the United States.

My name is William J. Young. I live in Peabody. I am treasurer of the W. J. Young Machinery Company. I have been manufacturing a heel-building machine for seven or eight years and we are putting it out now. We have put out between two and three thousand heel-building machines. They were practically all sold in this country. At the present time, the larger part of them go to shoe manufacturers. We make the Grover heel building machine. That goes to shoe manufacturers. We make three styles of heel building machines. We put out a buffing machine for buffing counters and box toes; a wedge-strip beveling machine, which makes wedge lifts for use in heels, and which goes to shoe manufacturers and heel manufacturers, probably more to the latter; a heel compressing machine, which is sold almost altogether to heel manufacturers at the present time; a wedge lift-cutting machine for dieing out the wedge lifts from the wedge strips in connection with the heel, which goes to both heel makers and shoe manufacturers; a counter end finishing machine which is used in connection with the counter; a heel-lift gouging machine, which goes to both heel makers and shoe manufacturers about equally; a counter molding machine; a box-toe skiving

machine; a counter-skiving machine; a shank-piece skiving machine; and a spring-heel scarfing machine. We do not build a rand-splitting machine, though we may possibly have handled one or two secondhand, and have not as yet put out a treeing machine. We do put out a waxing and rolling machine for counters. We employ between forty and fifty men.

1168 Cross-examination:

We have been in business for twenty-four or twenty-five years. Our business has been growing. The shoe manufacturing business is sometimes divided up so that one man makes heels and another makes soles, and they sell the heels and soles to the man who makes the shoe; but it is all part of manufacturing the shoe. We lease on a royalty rental our automatic lift-die machine, which has not yet been mentioned, and our counter-buffing machine, and one or two machines for molding the heel seat. The others we sell. We have put out two or three thousand heel-building machines, three or four hundred counter-molding machines, over three hundred heel-compressing machines, and one hundred and fifty to two hundred lift-gouging machines. All except the heel-builder have a pretty large capacity. The advertisements which you produce (pages 61, 152, and 185 of defendants' Exhibit 321) are our advertisements. We advertise ourselves as manufacturers of the most complete line of counter and heel making machines, and we consider that to be true. Referring to a newspaper clipping to the effect that W. J. Young Company are issuing a pneumatic treeing machine to the shoe trade, we are preparing to build a pneumatic treeing machine of German design. Nearly a year ago we imported two of them and we intend to build others like them. We make a rand trimming machine. That is a different thing from a rand splitting machine, which you have in your list.

Mr. CHOATE. I would like to ask the court for permission to change that name in our list and call it a rand-trimming machine instead of a rand-splitting machine, if I may do so.

1169 FEBRUARY 5, 1914.

JOHN F. DONNELLY, witness for the United States.

My name is John F. Donnelly. I live in Brockton. My company is the Donnelly Machine Company, which designs, manufactures, and rebuilds shoe machinery. I have been engaged in that business for fourteen years. We make a buffing machine which is used for scouring the bottoms of shoes before finishing. We have put out eighteen or twenty a year. They are sold to shoe manufacturers. We also make a beading machine which is used for beading around the heel seat of a shoe. We have

not put out more than eight or ten of them in a year. They go principally to cobblers. We make a machine that can be used for a breasting or brush or heel brush scouring or heel-finishing machine, and have put out perhaps fifteen or twenty a year to shoe manufacturers and repair men. The finishing shaft is the same machine we spoke of. We formerly made a handwheel welt indenter, but we have not sold one for six or seven years. We also formerly made a power tip-punching machine, but we have not made any for the last four or five years. I make a rotary edge setter, of which we have sold only two. We have just finished the wood patterns for it. I rebuild Carver heel-scouring machines, and probably buy and sell ten or twelve in a year. We also make and put out about the same number of the old Amazeen skiving machines. They go to shoe manufacturers, repair, and custom men.

We make an edge-trimming machine, 15 or 20 a year, which goes to shoe manufacturers, repair men, and cobblers. Our heel breast scouring machine and our heel breasting machine are two different machines. The heel breasting machine is a machine for cutting down the heels with a knife; the heel
1170 breast scouring machine scours the heel breast after it is cut. We do not make McKay sewing machines, although I have bought and sold perhaps five of them second hand since I have been in business.

We make for the Plymouth Rubber Company a rib tightening or hardening machine for stretching cloth on inner soles. It is called the rib machine.

I have heard of the concern of Gardner & Beardsell. I do not know anything about them. I have also heard of the Lacene Manufacturing Company, but I do not know what their business consists of. I have never heard of the Universal Supply Company.

Cross-examination:

All of the machines which I have been asked about except the tip-punching machine and the Amazeen skiver operate on the bottom of the heel of the shoe. My letter dated May 19, 1913, to the United Shoe Machinery Company and my advertisement appearing on page 60 of defendants' Exhibit 321 were correct with the exception that the statement that we manufacture the Carver heel scourer was a mistake.

1171 FEBRUARY 5, 1914.

CHARLES A. HAMEL, witness for the United States, (recalled).

My name is Charles A. Hamel. I reside in Haverhill. My Company, the Hamel Shoe Machinery Company, is the successor

of the C. A. Hamel Company. I bought out the Duplessis Shoe Machinery Company, and afterwards organized the C. A. Hamel Company, which has now become the Hamel Shoe Machinery Company. I became connected with the Duplessis Shoe Machinery Company in the United States in 1903. I was associated with it in Canada about 1898. I don't know when that company first began business. I was not with them when they first started.

Of the catalogue in defendants' Exhibit 321, following page 159, the first one, with a red cover, was probably issued in 1902, when H. H. Duchesne was manager. The second catalog, with the gray cover, saying on the outside "Duplessis outsole stitcher," was issued in 1905 or 1906. Of the machines stated in defendants' Exhibit 321, to be manufactured by the Hamel Shoe Machinery Company at Lynn and at Haverhill, we manufacture at Haverhill welt beating machines, grooving and beveling machines, welt and turn sewing machines, out-sole lockstitch machines, molding machines, turn-sole molders, loose-nailing machines, slugging machines, leveling machines, and tacking machines. I do not know whether the other machines mentioned in defendants' Exhibit 321 are made at Lynn or not. The machines built in Lynn I can't tell—I can't specify. I am not familiar with some of those.

Cross-examination:

We have recently fitted up a factory at Newburyport, under the name of Williamson & Porrell. We sold the machines 1172 there. We have recently taken over the business of the Beaudry Machine Company, of Lynn. It made an edge setter. We also have taken over the business of the Hart Machine Company, which made stitching-room machinery, and that of T. C. Rowen, who made buffers and edge setters and machines in that line. I do not know that we have taken over the business of the Briggs-Belmer Company, of Haverhill, or of any manufacturers of edge-trimming machines, cutters, and shields. Mr. John Sullivan is associated with my company as treasurer and stockholder. He came into the company about a year ago. I do not know that the Singer Sewing Machine Company through Mr. Sullivan is furnishing money to my company. All I know is that Mr. Sullivan, of that company, has become the treasurer of our company. I am vice-president of the company, and I manufacture down at Haverhill. T. C. Rowen is the president. We employ from sixty to sixty-five men at both our shops.

1173 FEBRUARY 5, 1914.

THOMAS C. ROWEN, witness for the United States.

My name is Thomas C. Rowen. I live at Swampscott. I am president of the Hamel Shoe Machinery Company of Lynn and Haverhill, Massachusetts. Of the list of machines mentioned and described in defendants' Exhibit 321 as having been made by the Hamel Shoe Machinery Company, we manufacture at Lynn the following machines, the beading machine, buffing machine, breasting machine, channeling machine, Hart power hammer, perforating machine No. 6 Hart, perforating machine model A Hart, perforating punch feed machine, scouring machine, scouring machine for tips, snipping machine Hart, and trimming machine for edges. We manufacture at Lynn all the machines that have not already been checked on the list of machines in defendants' Exhibit 321. The list had previously been checked by Charles A. Hamel, the preceding witness, to show the machines made by the Hamel Shoe Machinery Company, at Haverhill. We employ at Lynn thirty-five or forty men. Our principal business is with shoe manufacturers. We do not do any business with shoe repair men.

(At this point, it was stated by Mr. Gregg, in answer to Mr. Choate, that either Mr. Hamel or Mr. Rowen had testified to manufacturing each of the machines on the defendants' Exhibit 321 list of machines manufactured by the Hamel Shoe Machinery Company and that the entire list is confirmed by those two witnesses.

(No cross-examination.)

1174 FEBRUARY 5, 1914.

JOSEPH A. PINE, witness for the United States.

My name is Joseph A. Pine. I live at Marlboro, Mass. I am now an overseer in the shoe factory of Widder Brothers, of Portsmouth, New Hampshire. As to whether I am engaged in manufacturing machinery, I have manufactured a couple of machines; yes. I have manufactured a Naumkeag buffing machine, of which I put out a round thirty-five. They were all sold to shoe manufacturers. I still manufacture a few. They are made for me by Tower Brothers, of Hudson. The machine is used to buff the shanks of the shoe.

Cross-examination:

On May 23rd I wrote to the United Shoe Machinery Company that I could supply a Pine buffing machine, making prompt delivery, for a price of sixty-five dollars. The cut which appears on the reverse side of page 103 of defendants' Exhibit 321 is a cut of my machine. It operates on the bottoms of shoes, in finishing them after the sewing operation.

1175 FEBRUARY 5, 1914.

GEORGE T. LYONS, witness for the United States.

My name is George T. Lyons. I have been for two years manager of the Boston branch of the Elliott Machine Company. Our company puts out a button-attaching machine for attaching buttons to the uppers. It does not put out the Heaton Peninsular button-attaching machine, or the Universal button-attaching machine. The Heaton Peninsular and the Elliott are different concerns.

Cross-examination:

The advertisement which you show me from defendants' Exhibit 321 is our advertisement. The machine shown on the reverse of page 153 of that exhibit may have been in our factory in Grand Rapids. We have stations pretty much all over the United States for these machines. As to whether our company has anything to do with the Heaton Peninsular button fastener, well, they have something, but I don't just know what it is. The main office of the Heaton and the Elliott is in Grand Rapids, but it has all come in since I left Grand Rapids. As to whether they now handle those machines I couldn't say, one way or the other.

1176 FEBRUARY 5, 1914.

J. JOSHUA LEMAY, witness for the United States.

My name is J. Joshua Lemay. I am foreman of the lasting department of Rice and Hutchins. I have worked with lasting machines at that factory and at the factory of Boyd & Corey. Boyd & Corey had Chase machines only. I started with them in 1881—not on the machine at that time, but later on the Chase. They made men's, boys', and youths' McKays and welts. The Chase machine was used on both McKay and welt work. I went with Rice & Hutchins in 1897. They now make Goodyear welt shoes. At that time they were making McKay shoes only. They were then using the Chase and the Consolidated machines. The Chase machine was successful on McKay work, and subsequently was used on welt work. They also made women's McKay shoes, which they lasted on the Consolidated machine. That was after I started to work there, in 1897 or 1898. I know of no reason why the Chase machine could not be used successfully in lasting women's shoes. I have used it on boys' shoes in sizes from one to five. They were both McKay and welt shoes.

(No cross-examination.)

1177 FEBRUARY 5, 1914.

WALTER C. SPRINGER, witness for the United States.

My name is Walter C. Springer. I am assistant superintendent of one of the factories of Rice & Hutchins, Incorporated.

I have had partial charge at times of the lasting room, giving out work, supervisory duties only. At the present time we are making welt shoes on the Number Five and Consolidated lasting machines. Before the Number Five came out we had the McKay and Copeland machines and the Chase machine. The former was used on the heavier, coarser grades of men's shoes.

Q. On what kinds of shoes did you use the Chase machines?

A. McKays and welts—men's, boys' and youths'.

Q. Did you use it at all on women's shoes?

A. Yes, sir.

Q. Now, state whether or not that Chase machine can be used and was used in the lasting of women's shoes as well as men's shoes, and all grades of shoes.

A. Yes, sir; it was used on all the grades you mention.

Q. Was it used successfully?

A. Yes, sir.

Q. Do you know of any reason why it cannot be used on women's welt shoes the same as on men's?

A. No, sir.

Cross-examination:

I am not a machinery man, nor an expert on lasting machines, but I have had the responsibility of deciding what kinds of lasting machines to use. I have been assistant superintendent of what is called the Curtis Factory since it was built, twelve years ago, and before that I was assistant superintendent of the Cotting Avenue factory. Mr. Charles Curtis is at the head of the business, and most things go as he says in Rice & Hutchins' Marlboro factory, but he gives me very little instruction. 1178 The Chase machines were in the factory when I went there. I tried to do the work that came in with the machines which we had. We have made nothing but welt shoes in the Curtis factory, men's, almost wholly. None of them are now lasted on the Chase machine. We use the Number Five and the so-called "nigger-head" or Consolidated welt laster. Before the Number Five we used the Chase and the "nigger." We have never made women's shoes in the Curtis factory, but we did make them in the Cotting Avenue factory. I can not say how long I was employed in the Cotting Avenue factory, but I have been employed by Rice & Hutchins for nearly twenty years. The Curtis factory, so-called, is the Cotting Avenue factory continued. I went into the Cotting Avenue factory in 1893, and we moved out of it somewhere around 1902. In that factory mostly men's McKay shoes were made, and women's shoes were made only for a limited time. At first the bulk of the lasting was done by hand, with the Chase machine as an auxiliary, and

afterwards we installed the McKay and Copeland and the Consolidated McKay lasting machine, which is different from the Consolidated welt lasting machines. Most of our shoes were lasted with the Consolidated machine, but ten or a dozen Chase machines were kept in constant use. Making women's shoes was to some extent experimental with us, and was confined to a year.

Q. Why was it given up?

A. Why, we had some complaints and the people overreached themselves and were very much disappointed when we discontinued. I think they were looking for more value than we were willing to give.

Q. You mean they complained of the shoes?

A. Yes.

Q. What about that?

A. They said they were not selling. When Mr. Rice, of Rice & Hutchins, looked into the matter he couldn't find that they had any on hand. They cleaned them up—deceived them.

Q. At any rate you only did it for a year and then stopped?

A. Yes.

Q. How many of them did you make?

A. A matter of a few thousand pairs.

Our factory was set up in all respects to make men's McKays. We took on this small line of women's shoes as an experiment and used the same machines we had. I am not undertaking to give any very well-studied opinion as to the various uses that the Chase machines may be commercially put to successfully.

I am here to answer your questions.

1179 Direct examination resumed:

I never heard that there was anything wrong with the lasting of those women's shoes.

Cross-examination resumed:

Those women's shoes were McKays and were lasted on the Chase machines.

1180 FEBRUARY 5, 1914.

WILLARD G. BRACKETT, witness for the United States.

My name is Willard G. Brackett. I am connected with Joseph Breck & Sons' Corporation, who sell gardening machinery and seeds. I formerly owned six hundred shares of stock of the Eppler Welt Machine Company, which I sold on February 15, 1899. I do not remember to whom I sold them. I got six dollars and fifty cents a share for it. The capital stock was sixty thousand shares at ten dollars a share, six hundred thousand dollars in all.

(No cross-examination.)

1181 FEBRUARY 6, 1914.

LOUIS K. MCNALLY, witness for the United States.

I am a clerk in the office of the secretary of the Commonwealth. I have produced the original report of the United Shoe Machinery Company to the commissioner of corporations of the Commonwealth of Massachusetts in the year 1913, and certified copies of similar reports of that corporation for the years 1910, 1911, and 1912.

(These certified copies were introduced in evidence as plaintiff's Exhibits 276, 277, and 278, respectively.)

(No cross-examination.)

1182 FEBRUARY 6, 1914.

SIDNEY W. WINSLOW, witness for the United States.

Q. Mr. Winslow, you furnished at the request of the United States a list of shoe manufacturers holding machines of the lasting, heeling, or metallic departments of the United Shoe Machinery Company on January 1st, 1905, on independent unrestricted leases, giving therein the total number of lessees on such leases as 706. At random I will pick out the firm of Boyd & Corey, boot and shoe manufacturers. Have you any idea, Mr. Winslow, what particular machine is covered by that lease?

A. No, I have not.

Q. Do you have any idea what kind of machines is covered by these unrestricted leases of any of these manufacturers?

A. Well, I haven't at the present time. It might be, of course, in any one of the different departments. Take, for illustration, the McElwain Company. I had prepared a memoranda of the lasting machines which it took from our company from the date, I think, of the formation of the company, up to 1911, on independent unrestricted leases.

Q. Now, where any kind of a machine, regardless of the importance or character, is held by a lessee under any of those forms of lease which you call unrestricted, that company holding such a lease has been placed on this list; that is true, isn't it?

A. I don't understand what you mean by unimportant machines.

Q. Well, Mr. Winslow, we will leave the word "unimportant" out and say, doesn't it include unrestricted leases on every character of machine that is held under lease?

A. In those departments.

Q. In the departments that are mentioned here?

A. Yes, sir.

Q. Some of the leases may cover one machine and some of them may cover a number of machines?

A. I understood that to be your question. I understood that to be what you asked for.

Q. And this includes lessees who are engaged in the repair business, as well as those who are engaged in manufacture?

A. No, sir; entirely confined to shoe manufacturers. I think it is so stated on the list.

(No cross-examination.)

1183 FEBRUARY 6, 1914.

FRANK ALBERT BRACKETT, witness for the United States.

My name is Frank Albert Brackett. I am now employed by W. H. McElwain. I formerly worked in the shoe factory of the Boylston Manufacturing Company, at Fairhaven. They made men's shoes. That was in 1908 and 1909, if I remember correctly. I was familiar in a general way with the machines that were being operated in that factory. They had two welting machines which were manufactured by the Boylston Manufacturing Company. The company did not put any of them out but was just operating them in its own factory. One of the welt machines, but not the other machine, had a stop motion attachment, and it had a little finger where the welt went through so that it wouldn't pull back; that was called a welt holder, and it was a very simple arrangement. They were on the machines in 1909. I do not know when they were developed. I had nothing to do with that development. That was done in Boston. I am superintendent of the factory.

Cross-examination:

That was Mr. Henry H. Rogers's factory. During the last year it was equipped to make men's welt shoes. We had no machines obtained from the United Company. We got them all elsewhere, and we made welt shoes without any machines from the United Company. The most we ever made was twelve hundred pairs a day.

1184 FEBRUARY 6, 1914.

CHARLES H. JONES, witness for the United States, recalled.

My name is Charles H. Jones. I am president of the Commonwealth Shoe and Leather Company.

Mr. GREGG. Now, if the court please, last spring when I had Mr. Jones on the stand I had him produce a list of the machines that he had in his several factories at Whitman, Gardiner, and Skowhegan, and the list that he produced related only to the bottoming machinery and the eyeletting and clicking machines. Mr. Choate asked that the list be made complete and include all the machines in his factory, and for that reason, to accommodate him, I withdrew that exhibit, and I now have the second list.

I have prepared a list of all the machines that I have in my factory, including not only bottoming room but also upper stitching room machines. It shows under the column headed "U. S. M." the machines obtained from the United Shoe Machinery Company and under the column marked "Outside" those obtained from other manufacturers.

Mr. GREGG. Now, I would like to have that exhibit marked as a Government exhibit. However, I wish to make the statement that in connection with this list that is now produced the Government does not rely upon any part of it except machines used for adjusting and attaching the upper to the last, and machines for preparing and attaching the bottoms to the uppers, and machines for finishing the bottoms, and clicking machines and eyeletting machines.

(This list of machines in use in all the factories of the Commonwealth Shoe and Leather Company is marked "Plaintiff's Exhibit 279.")

(No cross-examination.)

1185 FEBRUARY 6, 1914.

WILLIAM B. ARNOLD, witness for the United States.

My name is William B. Arnold. I formerly owned one hundred shares of the stock of the Eppler Welt Machine Company. I sold it about the time of the organization of the United Company, receiving six hundred dollars for my hundred shares. My impression is that I sold it to Mr. George W. Brown, vice president of the United Company.

Cross-examination:

I can not fix very accurately the date when I sold my stock. I can't tell within a year as to when it was. I am quite sure that I sold it either to Mr. Brown or to Mr. E. P. Hurd. But I would not be positive.

1186 FEBRUARY 6, 1914.

WILLIAM G. JOPSON, witness for the United States.

My name is William G. Jopson. I live in Abington. I am general manager of the American Worsted Machinery Company. The company does not now manufacture any McKay channeling machines. I have been with the company only since January 1st of this year. Prior to that time Mr. Bicknell Hall had the position that I now occupy. I only have knowledge of the business since the first of this year.

(Replying to a question by Mr. Choate, Mr. Gregg stated that he did not claim that this witness's testimony is of any consequence with reference to the defendants' representation about the American Worsted Company.)

(No cross-examination.)

1187 FEBRUARY 6, 1914.

BICKNELL HALL, witness for the United States.

My name is Bicknell Hall. I live in Abington. I was formerly connected with the American Worsted Machinery Company as president and agent. I was with that company from 1907 until last January. During the period that I was connected with the American Worsted Machinery Company we manufactured the McKay channeling machine. We put out twenty-five or thirty altogether. They went to shoe manufacturers. We put out also four types of eyeletting machines—model A, model B, Monitor, and Eureka. During that period we put out between one hundred and twenty-five and one hundred and fifty eyeletting machines. They were sold a good deal through dealers, who were practically our agents. We did not make or handle a finishing shaft, a straight-edge folding machine, a hooking machine, or a channel-laying machine. We made a pinking machine, but we did not make a perforating machine unless it is the same machine. These machines are used on the tips of shoes. We did not make or handle a rounding or a channel opening or a feather-edge and shank-reducing machine. We did not make a McKay sewing machine, but we handled and made parts for that machine. We did not make or handle a lip-turning machine or a rand-turning machine.

Cross-examination:

The American Worsted Machinery Company began business when I went with them in the fall of 1907 or in January, 1908. They continued to run their shop in Abington until recently, when they sold out to certain English capitalists. I think it was last October. I understand that they are now preparing

1188 to manufacture English textile machinery in this country.

I wrote the letter dated May 19, 1913, on page 1 of defendants' Exhibit 321. We had a machine shop and machine tools and were prepared to manufacture any machinery desired in the shoe line—any kind of shoe machinery that any one ordered. We had facilities for making all of the machines named in that letter and we were ready to make them for anybody; we quoted prices in that letter on a Severance tap rounder, $12; straight-edge folder, $15; bottom polishing shaft, $8 (that is the same as a finishing shaft); channel layer, $18; Little Giant hammer, $15; feather reducer, $25 (that is the same thing as a feather-edge reducing machine); perforator, $65 (that is the same as a perforating machine); rand turner, $18; lip turner, $35; Fischer channel opener, $35; McKay sewer, $250. A McKay sewer is a

McKay sewing machine, and we were ready to make that for anybody. Our catalogue shows that we were ready to furnish to customers the following machines: McKay channeler, Fischer channel flap turner, power punch and eyelet machine, power eyelet machine, B eyelet machine, O. K. self-feeding eyelet machine, Eureka self-feeding eyelet machine, Monitor self-feeding eyelet machine, foot hook set machine, foot punch, Tripp improved skiver, new old-style skiver, pinking machines, pinking-roll turner, Amazeen knife.

We wrote to the United Company on May 17th, page 2 of defendants' Exhibit 321, quoting prices on certain machines which are named in our letter. The machines and the prices quoted are a McKay channeler, $18.00; "A" machine (that is an eyeletting machine), $40.00; raceways, $14.00; "B" machine, $22.00; raceways, $10.00; O. K. machine, $18.00; raceway, $9.00; Eureka machine, $12.00; raceways, $5.50; Monitor machine, $16.00; foot hook set machine, $4.00; foot punch, $2.25; calendar punch, $9.00; Tripp improved skiver, $18.00; new old-style Tripp skiver, $8.50; geared pinking machine, $7.50; hand pinking machine, $4.00; pinking roll turner, $4.50. We were ready to furnish those machines to anyone who ordered them.

1189 Direct examination resumed:

We had all the machines, mentioned in the last letter, ready to put out—ready to supply to anybody.

1190 FEBRUARY 6, 1914.

JOHN F. CAVANAUGH, witness for the United States.

My name is John F. Cavanaugh. I live at Ashland, Mass. I am a salesman of shoe machinery connected with the Boylston Manufacturing Company. I have been with that company since 1898, and in my capacity of salesman have traveled over this country, visiting shoe factories, and have been abroad. I have heard of the Atlas-Werke Pohler Company, of Leipzig, Germany. They are in the shoe-machinery business. To the best of my knowledge, they are not engaged in business in this country. I have heard of Adrian & Busch, of Frankfurt, Germany. They are in the shoe-machinery business, but they do no business in this country, so far as I know. Dilley & Sons, of Northampton, England, are to my knowledge engaged mostly in supplying shoe findings. I don't know whether they do any business in this country. Gimson & Company (Ltd.), of Leicester, England, are in the shoe-machinery business. They are preparing to put machines out in this country. Heaton's (Ltd.), of Leicester England, make a slugging machine. They do not do business in

this country to my knowledge. A. H. Johnson, of Leicester, England, is the same concern as A. Johnson, who is in Paris, France. He is engaged in the shoe-machinery business, but does not do any business in the United States. I never have heard of Keats & Boxon (Ltd.), of Stafford, England. I have heard of the Keats Machinery Company, of Frankfurt, Germany, but I do not know much about them. I have never heard of the Job Lee Premier Works, of Kettering, England, or of Lintz & Eckhardt, of Berlin, Germany. Livingston & Doughty, of
1191 Leicester, England, are mostly a supply house. They do no business in this country so far as I know. I never heard of Stephen Lucking, of Chester, England. I have heard of Mills & Company, of Kettering, England. They had supplies and a kind of lasting machine; I don't know whether they do business in this country. Mobbs & Lewis (Ltd.), of Kettering, England, have a treeing machine. They do no business in this country. The Moenus Machine Works, of Frankfurt, Germany, have a complete line of shoe machinery, as do Nolle's Works, also in Germany. Neither of them do any business in this country, as far as I know. The Northampton Machinery Company (Ltd.), of Northampton, England, was a branch connected with the Standard Rotary Company. It is engaged in the shoe-machinery business. I believe they do no business in this country. I have never heard of A. T. Ralphs, of Norwich, England. The Standard Engineering Company, of Leicester, England, have a lasting machine, and buy and rebuild other machines. They are quite successful in the machinery line. They do no business in this country. The Standard Rotary Machine Company, of Rushden, England, have a complete line of machines. They do not do any business in this country. I do not know Summers & Sons, of Wellinborough, England. To my knowledge John Thacker, of Leicester, England, handles supplies and findings. So far as I know, he does not do business in this country. Timson, Bullock & Barber, of Kettering, England, sell shoe machinery; I believe they do no business in this country. I do not know the Universal Shoe Machinery Company (Ltd.), of Northampton, England, nor the Velocity Machine Company, of London. Ward & Gent, of Northampton, England, do a good business in shoe machinery, stitchers, but are doing no business in this country. I do not know Whitehead & Company, of Dunkinfield, England.

1192 The Boylston Manufacturing Company took over the Tripp Leveler Company in 1904. We disposed of the machines which the Tripp Company had on hand and sometimes rebuilt a machine, but we have never manufactured any.

The Union cementing machine was formerly manufactured by the Flagg Manufacturing Company. It is obsolete, and we have never manufactured any. The Boylston Company took over the Flagg Company in 1904.

Cross-examination:

My work for the Boylston Company keeps me traveling all over the country, offering and attempting to place the machines. We have a lasting machine, but can not sell it.

Q. You recently put one in in the S. H. Howe factory at Marlboro?

A. That is recently, within a month or two.

Q. Well, don't be ashamed of it.

A. I am not ashamed of it.

Q. Don't be discouraged about it. You have recently put one or two pulling-over machines there, too, haven't you?

A. At the same time.

Mr. CHOATE. Well, cheer up.

The WITNESS. I am. I feel all right.

Q. You have recently put a slugging machine there, too, haven't you?

A. Yes, sir.

1193 Q. You have sold quite a number of heel-blacking machines, haven't you?

A. I have.

Q. Copeland heel-finishing machines—haven't you?

A. Yes.

Q. You have put sixteen of those Copeland heel-finishing machines down in Auburn and in Binghampton?

A. In Auburn.

Q. Auburn and Binghampton. Auburn, Maine, and Binghampton, New York?

A. Yes.

Q. You put four of those Boylston machines in Florsheim's factory, haven't you?

A. Yes.

Q. And you put thirteen of them in the Selby Shoe Company, Portsmouth, Ohio?

A. Yes; put thirteen there.

Q. And you put five of them with F. M. Hoyt Shoe Company, Manchester, New Hampshire?

A. That is right.

Q. You have also put your heel-blacking machine with Cushman, Hollis & Company, Auburn, Maine?

A. Yes, sir.

1194 Q. You have been spending a good deal of time lately in getting witnesses for the United States; that might have interfered with your shoe machinery selling?

A. I don't think so.

Q. Haven't you been quite busy lately getting witnesses for them?

A. I wouldn't consider so.

Q. I don't know what you consider quite busy, but you have been out working on it, haven't you?

PUTNAM, J. You don't question the facts he states, do you?

Mr. CHOATE. I think his testimony is very much tinged with bias.

PUTNAM, J. All right.

Q. You have been busy getting witnesses for the United States lately?

A. I can't say as I have been busy.

Q. Have you been at work on it?

A. At work on it?

Q. Yes.

A. That would depend on what you consider work.

Q. Have you been around seeing people that have been here as witnesses?

A. I might have seen some.

Q. And have you been in consultation with the attorneys for the United States about witnesses for them?

A. About witnesses?

Q. Yes.

A. I couldn't say I have been in consultation about witnesses.

Q. About the trial of their case?

A. I don't know as I can just interpret how you mean that.

The Standard Rotary Machine Company, Gimson & Co., Johnson, of Paris, the Moenus works, the Nolle works, and the Atlas works are all good sized concerns. The Standard Rotary Machine Company and Johnson manufacture complete lines of shoe machinery. When I said that as far as I know they were not doing business in the United States, I mean that I have not seen them doing business in my travels. The Standard Engineering Company is ready to do business in the United States if the opportunity appears, and I should say that the other companies would do so, although I do not know that they would.

1195 FEBRUARY 6, 1914.

HARRIE A. BALLARD, witness for the United States.

In 1894, I was employed by the Copeland Boot & Shoe Treeing Company, at South Framingham, Mass. While I was working there I devised a welt support or holder which held the welt

against the shoe while the needle was going out of the welt and which obviated the necessity of holding the welt with the fingers while the needle was being removed from it. That was used at Fairhaven in 1907 and 1908. We also had on our welt machines at South Framingham a stop-motion which afterwards was used in Fairhaven. The device was not used anywhere else.

The welter which we had at South Framingham was also equipped with a welt-cutting and a thread-cutting attachment which I invented. These devices were afterwards used at Fairhaven in 1907. A certain Mr. Emery came to South Framingham and made an examination of our machinery in 1905.

Cross-examination:

I was at South Framingham when Mr. Emery came there in 1904, acting as superintendent of the machine shop. I was then connected with the Copeland Boot & Shoe Treeing Company, who made shoe-treeing machinery. Mr. Emery was introduced to me by Mr. Copeland, and I went through the different rooms of the shop with him. We employed at that time about thirty men. Mr. Emery spent about an hour in the factory, and walked through its different rooms.

Q. Were any machines in operation?

A. You mean treeing machines? Our treeing machines was all in operation; yes, sir.

Q. They were all in operation?

A. Yes, sir.

Q. Was there any welt machine there that was in operation?

A. Yes, sir; that is, we had a shoe and we run it through the machines.

Q. And was there any stitching machine there?

A. Yes, sir.

Q. Whose stitching machine was it?

A. My machine.

Q. You mean a Copeland?

A. A Copeland machine; yes, sir.

Q. Had you gotten out a stitching machine?

A. One I was making; yes, sir.

Q. And did you get out a welter, also?

A. Yes, sir.

Those were the machines which were used at Fairhaven. They never have been put on the market elsewhere.

1196 FEBRUARY 6, 1914.

WILLIAM F. DONOVAN, witness for the United States.

My name is William F. Donovan. I am president of the Atlas Tack Company, and take an active part in the manage-

ment of the company. I have some general trade knowledge of the eyelet business in the United States. We sell eyelets. The Rimmon Company, the S. O. & C. Company, the Rhodes, the Hughes, and the Atlas Tack Company, and the Fast Color Eyelet Company, are, so far as I know, the only companies selling shoe eyelets to shoe manufacturers in the United States. Our output during the last year has been from forty to sixty million eyelets per month. Three or four years ago, before my advent into the business, it was nearly twice as high. Practically all of the eyelets we make go into the shoe trade. I do not know of the Caseley-Nelmes Company. The Scovill Manufacturing Company make eyelets for general purposes. It is possible that they make shoe eyelets, but I never heard of it. The R. N. Bassett Company make corset eyelets, I think. The Waterbury Brass Company and the Waterbury Manufacturing Company, are not, so far as I know, in the shoe eyelet business. I do not know anything about the American Ring Company, or, in connection with shoe eyelets, about the Rome Brass Works. In making shoe eyelets we come in competion with no concerns except the five I have mentioned, that I can recall.

Cross-examination:

I have been with the Atlas Company for three years. I was not in the eyelet business before that. My knowledge is confined entirely to my experience during those three years. We have recently begun to make corset eyelets. I think
1197 most eyelet makers make eyelets for different kinds of businesses, and their eyelets are used for a great many other things besides shoes. Very possibly some of the other five concerns of which I spoke that make shoe eyelets also make other kinds of eyelets and possibly some of those other concerns make shoe eyelets. Eyelets are used for a great variety of purposes. The market for shoe eyelets has been cut down within the last few years, on account of the great increase in the number of button shoes that are being manufactured and used. We attribute our decreased production to that.

1198 FEBRUARY 6, 1914.

RICHARD H. LONG, witness for the United States, recalled.

My name is Richard H. Long. I testified last spring in this case. I have never tried to sell the R. H. Long Machinery Company to the United Company or offered it to them.

Cross-examination:

I know Mr. Maurice Bresnahan. At one time he asked me if I would sell my shoe machinery business to the United Com-

pany. That was in 1911 or 1912, after Mr. Plant had sold out. We talked about it three or four times in Boston; he invited me to lunch at the Essex once, and once at a restaurant near the market, and on one occasion he invited me to come down to Beverly, and I went down there, but nothing was said about selling out at Beverly. I don't remember where the third place was that we talked about selling. I did not solicit Mr. Bresnahan to sell my business to the United Company. I told him I was not interested at all, to sell the business, and did not intend to sell it out. I know Junius Beebe who is engaged in the leather business. He is a friend of mine. I have known him a long time and buy leather of him. I have talked with him about selling out my business to the United Company.

Direct examination resumed:

The substance of my conversation with Mr. Beebe was that he thought it would be a good thing for me to dispose of my machinery business. The conversation took place two or three years ago. I never intended to sell.

1199 Cross-examination resumed:

I never suggested to Mr. Beebe that he see the United Company to find out what he could do for me. Not to my knowledge did he ever say anything to the United Company, and he didn't tell me that he had talked with them.

(At this point counsel for the United States read into the record certain advertisements of the Consolidated & McKay Lasting Machine Company in the Hide and Leather Reporter of December 3, 17, and 31, 1898, advertising the Consolidated hand-method lasting machine for lasting welt shoes. Counsel also read an advertisement of the Chase Lasting Machine Company under date of December 22, 1907, advertising that machine for the purpose of lasting women's shoes. Counsel also read an advertisement of the Eppler Welt Machine Company published in the Boot & Shoe Reporter, issued on November 9, 1898, stating that the royalty rates for the Eppler machines when used on men's shoes was three cents per pair. At this point the Government rested.)

1200 Additional evidence for the defendants before the court February 10, 1914.

Appearances.

For the United States: James A. Fowler, assistant to the Attorney General; William S. Gregg, special assistant to the Attorney General; Allen Webster, special assistant to the Attorney General.

(After the decision in the District Court): Constantine J. Smyth, H. LaRue Brown, special assistants to the Attorney General.

For the defendants: Frederick P. Fish; Charles F. Choate, Jr., William A. Sargent, Malcolm Donald, Harold G. Donham, Walter B. Farr, Lafayette R. Chamberlain.

FEBRUARY 10, 1914.

EDWARD P. HURD, witness for defendants.

1201 I live in Newton and I know William B. Arnold, of Abington.

Q. Mr. Arnold testified that he thought some time in 1899 he sold you one hundred shares of the Eppler Welt Machine Company. Did you ever buy of Mr. Arnold any shares of the Eppler Welt Machine Company for yourself, or anybody else?

A. No, sir; to the best of my recollection, nor any other Eppler shares from anyone else.

Mr. CHOATE. That is all.

Mr. GREGG. No cross-examination.

FEBRUARY 10, 1914.

GEORGE W. BROWN, witness for defendants.

I live in Newton. I know William B. Arnold, of Abington.

Q. Mr. William B. Arnold testified that he thought he sold either to you or to Mr. Hurd some shares of the Eppler Welt Machine Company in 1899. What do you say, Mr. Brown? Did you ever buy any shares of him?

A. No, sir.

Q. Either for yourself or for the United Shoe Machinery Company or anybody else?

A. No, sir.

FEBRUARY 10, 1914.

FREDERICK L. EMERY, witness for defendants.

I live in Lexington and am a member of the bar and of the bar of this court. I have been practising twenty odd years.

In 1910 and for quite a number of years prior to that year I was one of the patent counsel and patent solicitors for Mr. Thomas G. Plant.

Q. Harrie A. Ballard, of the Copeland Machinery Company, says that in 1904 or thereabouts, you visited the Copeland Company's machine works in South Framingham, and that you were there shown a welter and a stitcher on which there was a stop-motion device like that which Mr. Plant subsequently developed, and a welt-holding and cutting device like that which Mr. Plant subsequently developed. What do you say about that?

A. I have no recollection whatever of being shown either of those devices.

Q. Were you familiar with the development of those devices by Mr. Plant?

A. Yes, sir.

Q. You were with him all the time that that was being done?

A. A large part of the time.

Q. It has been suggested by one of the attorneys for the United States that Mr. Plant obtained his ideas with respect to those devices from Mr. Ballard or Mr. Ballard's devices or inventions. What do you say about it?

A. It is absolutely not so.

1202 Q. Had Mr. Plant any connection with Mr. Ballard, or, to your knowledge, did he or anybody employed by him know anything about any work that Mr. Ballard had done in that direction?

A. So far as I know, none whatever.

Q. And you were familiar with the development of those devices from the beginning?

A. Very familiar—worked with him all the time on it.

Cross-examination:

As to whether I went through the Boylston factory, I was shown through a shop. Whether it was the entire shop, I do not know. That was located in South Framingham. My purpose in going through the shop was to see what machinery Mr. Copeland had at that time, constructed or in process of construction. I went through at the invitation of Mr. Copeland.

I did not have any conversation with Mr. Plant relative to that particular visit. He merely knew that I was to go there.

As to what machines I saw in the Copeland factory, my recollection is that I was shown the automatic treeing machine and a hand treeing machine and a wire tacker.

Q. Did you see a welt-sewing machine there?

A. I have no recollection of seeing such.

Q. You won't say whether you did or not?

A. I feel very certain that I did not.

Q. Did you see an out-sole stitching machine there?

A. I did not.

Q. You are positive of that, are you?

A. So far as my recollection serves me, I saw neither of those machines.

As I have stated, my purpose in going through the Boylston factory was to see the line of machinery that Mr. Copeland had, so far as developed. At that time I was working on the Plant patents and machines.

Direct examination resumed:

It is my recollection that I went at Mr. Copeland's invitation.

He went with me.

1203 FEBRUARY 10, 1914.

MAURICE V. BRESNAHAN, witness for defendants.

I live in Lynn and know Richard H. Long, of Framingham.

I did not on any occasion have any conversation with Mr. Long with reference to the sale of his machinery business to the United Company. He did say something to me with reference to the sale of his machinery or shoe machinery business to the United Company.

There was a personal matter between Mr. Long and myself which had not been settled up before I went with the United Company. We lunched at the Hotel Essex and settled up that matter. After that the conversation naturally drifted to the United Company. He wanted to know how I liked being with the company, and I told him very well indeed, and I also told him about the improved machines that the company had, and he expressed a wish to go to the factory and take his man, Mr. Doidge, with him to see those machines.

I told him that I would arrange with Mr. Brown, our general manager, to allow him to go through the factory. I did this, and I took them through the factory. Mr. Long was surprised to see so many improvements and seemed rather pleased.

I took him all through every place there was there, and while we were discussing matters there he said to me: "I don't know but what I would be better off if I would give the whole of my time and attention to the manufacturing of shoes and let the shoe machinery alone. If I could get rid of what I have, I would be better off to do so. What do you think? Do you suppose I could get them to take it?" I said: "I don't know; I will speak to Mr. Brown about it and let you know." So I left him; he didn't stop to lunch at the factory; he and Mr. Doidge went home before lunch, and I remained at the factory. Three or four days after that I met Mr. Brown and told him the conversation. He wanted to know what Mr. Long had, and I told him simply copies of machines that had been discarded by the company and nothing, so far as I could see, that was an improvement or new. He said: "We wouldn't have any use for that; I don't see that there is any use in discussing the matter any further." So I telephoned Mr. Long and made another date with him, and we had lunch at the Essex again, and I informed him the conclusion the general manager had come to. That ended it, and I haven't seen Mr. Long since.

Q. He says you approached him and tried to buy his shoe machinery business; is that so?

A. It isn't so. I had no authority to do anything of the kind, and I haven't exceeded my authority yet.

1204 Cross-examination:

I did not ask Mr. Long if he would sell his machinery. I did not make any statement of that character to him. I saw him about my own personal matter at the Essex Hotel at Boston. Mr. Long's statement that he did not know but what he would be better off if he adhered strictly to shoe manufacturing was made at the United Company factory in Beverly, after he had seen the new machines. The matter of purchasing his machinery was not mentioned at our first meeting at the Essex Hotel. At that meeting he expressed a wish, when I told him of the machines that he knew nothing about, to see the machines, and to have his superintendent or general manager, Mr. Doidge, also see them. I arranged for them to do this, and we went down to Beverly.

At Beverly Mr. Long expressed a wish to have me discuss the matter of selling his business with Mr. Brown, and see if the United Company had a desire to take it over. Nothing was said about the price. Mr. Long never made any statement to me that he did not desire to sell his shoe machinery.

1205 FEBRUARY 10, 1914.

GEORGE E. KEITH, witness for defendants.

I have been called before by the United States, and I was also under summons by the United States all last week and was not called.

I am a shoe manufacturer in Brockton, and have been for a good many years.

I did not have an Ideal lasting machine in my factory before the organization of the United Company in February, 1899. I put in the first Ideal machines in my factory in November, 1899.

The occasion for my taking any Ideal machines at that time was that that was about the time of a radical change in the style of shoes; it was the era of what they call the bulldog toe. The bulldog toe originated in Brockton, and so far as I know there was no manufacturer in Brockton ahead of me in the introduction of the high-toed last.

The idea of getting the Ideal machine to try on the high-toed last was because it wiped up on the side of a last better than the Chase and then with the adjustable head helped us to overcome the height and width of the toe. That was the reason that led me to take and try the Ideal. I got them first in November, 1899.

When we first used the Ideal laster on men's shoes we couldn't get the result that we expected or wanted. The difficulty was that the machine being so light the last would lift as you came up on the sides of the toe, and the result was that you couldn't push over the—I don't know just the word you would apply—push over the vamp at the top of the last. It would rise, so that it was impossible to do the work.

A device was developed in my factory to be attached to the Ideal machine to help it in lasting men's shoes. This was an attachment that could be swung around to hold the last down in its place so that the work could be performed better and so that the last could not rise. Very soon after we began to use the Ideal machine my people got to work trying to find something like that. We were up against this difficulty, and we had to invent some way to overcome it. The superintendent or foreman of Lasting Department No. 3 was one of the first who conceived the idea, and then it was perfected afterwards, but I do not know by whom.

Until that was done, in my opinion, the Ideal machine would not be commercially a success, under the conditions that were on the market at that time. Before we put on the hold down the trouble was with bringing the upper smoothly on a last that had a wide edge—to bring that up smooth before it was wiped over. As it came up over the sides of the last the last would spring up. As a result, we could not complete the job.

1206 This required the operator to keep repeating the operation a number of times and that slowed him down, and it creased fine leather or patent leather so that the shoe would be almost ruined.

After this hold-down adjustment was put on we increased the number of Ideal machines. So far as I know, there was no other place in the country where the Ideal machine was used for lasting men's shoes except in Brockton, where the high-toed last originated.

Cross-examination:

I never operated a lasting machine myself, but I think I know something about the operation of lasting machines. Just from observation; yes, sir. I never had any Copeland rapid lasters.

Before we took up the high toes we used the Chase machine. We got the Ideal machine to last the high-toed shoes, because we thought it could perhaps do better work. I remember very well the difficulties we met in lasting them.

The Chase machine was all right when we had the ordinary lasts, but it had a head that was permanent—it could not be

adjusted. And you can see the point—when jumped from a low toe in a last to a very thick high toe that it didn't adjust itself so well as the Ideal machine. But the Ideal machine of itself was not strong enough to do the work after we put it in, and we soon saw that some improvement had got to be made on the machine.

We used the Ideal machine a very short time before we put on this improvement. I couldn't state any definite time.

Direct examination resumed:

The output of my factory is twenty thousand pair a day.

1207 FEBRUARY 10, 1914.

NELSON W. HOWARD, witness for Defendants (recalled).

Direct examination:

Prior to the organization of the United Company the Goodyear Company had put out 248 Ideal lasting machines. Nearly 200 of those machines were in factories where only women's shoes were made.

Q. Now, have you ascertained whether any of those were in factories where women's shoes were made exclusively?

A. Practically all women's welt shoes that were being lasted by machine in 1899—January 1st, 1899—were being lasted on the Ideal lasting machine. That machine practically had the women's welt shoe field to itself.

Mr. GREGG. I submit, if the Court please, that that answer is not responsive to the question at all.

Q. My particular question was whether you had been able to ascertain how many of those Ideal machines were located in factories where they did not——

PUTNAM, J. Was it an answer to that question?

Mr. CHOATE. Yes, sir.

PUTNAM, J. Well, of course it is not responsive, Mr Choate.

Mr. CHOATE. I will put another question. I want to get this one answered first.

At that time some 40 or 50 Ideal machines were in factories where both men's and women's shoes were made, and about 40 were located in factories where only men's shoes were made. The factories where Ideal machines were used in making men's shoes were chiefly in Brockton, which was the centre of that use. The high-toed last was introduced in 1899. The last of defendant's Exhibit 135 is the last which was supplied by the Boston Last Company from 1899 to 1901.

Mr. Keith's factory got its first Ideal machines in November, 1899. Keith had no Ideal machines prior to the organization of the United Company. There were 17 in the Douglas factory then, and Whitman & Keith had 7 Ideals.

In reference to the testimony of Mr. Heffernan, superintendent of the Whitman & Keith factory, that in his opinion the Ideal did better work on the whole than the No. 5 lasting machine, I have examined the records of royalty returns from the Whitman & Keith factory. I found that the largest day's work done on the Ideal machine in that factory since January 1, 1899, was 164 pairs in March, 1911. The largest day's work done on the No. 5 lasting machines, since the first one was installed in that factory, was 193 pairs in November, 1911. That is 29 pairs more than the highest number done on the Ideal, and represents approximately the increased capacity of 1208 the No. 5 machine over the Ideal. I also found that of the two Ideal lasting machines leased by Whitman & Keith in 1907, one has been entirely idle since April, 1911, and the other has been entirely idle since March, 1912, and after April, 1911, very few shoes were lasted on that machine. Of the other seven Ideal machines which Whitman & Keith had obtained before 1907, two have been idle for a considerable period—I can't state for how long, because those are non-royalty machines—so that the situation is that four Ideals are idle in Whitman & Keith's factory, of which two are nonroyalty machines, while the three No. 5 lasting machines, which were shipped, respectively, in September, 1907, and January and February, 1911, have been in constant use ever since they were installed.

The royalty which Whitman & Keith pay on the No. 5 machine is five-eighths of a cent a pair and they pay one-half a cent a pair on the Ideal machines, so that they are using to their full capacity all three of the No. 5 machines on which they pay a higher royalty, and are not using at all some of the Ideal machines on which they would have to pay a lower royalty.

The characteristic and unique feature of the Ideal machine was the upward wipe which it imparted to the upper over the end of the toe. In the Chase machine the wipers had only a substantially horizontal movement to work the upper in over the feather edge of the insole and against the rib. The Ideal had this upward wipe over the toe, and at the conclusion of that upward movement the wipers were moved in to force the upper materials against the rib of the insole.

As to the stability of the toe lasting head in the Ideal machine, the wipers were supported at a substantial distance away from their acting edges on a head which was secured to the machine by a couple of levers pivoted under the wipers, which constituted the only support for the toe lasting head. This is well shown in the drawings of Grandy patent No. 552,834, January 7, 1896,

(a copy of which is in defendants' Exhibit 152) which shows the construction of the toe lasting head of the Ideal machine. The wipers 10 were carried on a rod 14, and the pivot to which I referred is marked 3. The toe lasting head was supported only by that proof and two levers, 2. The screw 4 served to tip the head to change the inclination of the wipers lengthwise of the machine, and it had no other utility. The support afforded by it was almost negligible.

The holddown was attached to one side of the machine and was operated to hold the last down on the toe rest, which is shown in other figures of this patent.

1209 The part 2 was frequently breaking in the operation of the machine on men's shoes. It was this characteristic of the organization of the machine which constituted its weakness in its use on men's shoes. Owing to the fact that the wipers were supported so far from their acting edges, and that there was lack of support for the toe-lasting head directly under the wipers, the wipers sprung so that they would not seat the upper materials properly against the lip of the insole, and owing to the strain there was frequent breakage.

That weakness in the organization of the machine which I have described didn't affect its successful operation in operating on women's shoes. The strain is so much less than that which the machine encounters in lasting men's shoes that the machine was strong enough for its operation upon women's shoes. But when it came to deal with the heavier leather of men's shoes, then the difficulty disclosed itself. The Chase machine didn't have this upward wipe across the face of the toe, which I have explained in discussing the Ideal machine, and had only a substantially horizontal movement. It therefore was provided with what was known as a retarder, which bore down on the upper materials, spread back over the wipers, and prevented frictionally the slipping of the upper stock as the wipers were moved forward, in that way the necessary strain being obtained to get an upward pull on the stock over the toe as the wipers moved in. That worked satisfactorily on the heavier leathers of men's shoes, but on the lighter leathers of women's shoes it would pull the stock along the centre of the shoe and would result in bowing or bending the tip seam forwardly, which of course was bad shoemaking and spoiled the shoe.

PUTNAM, J. Your petition alleges that the Goodyear lasted ten per cent.

Mr. GREGG. Yes.

PUTNAM, J. That I suppose was the Ideal.

Mr. GREGG. That was the Ideal machine.

The WITNESS. Thirty-four hand method lasting machines were under lease prior to the organization of the company. Other machines were out, but the manufacturers wouldn't take them; the machines were being knocked around from pillar to post. They didn't stick. They would be sent out on trial and they wouldn't stay.

1210 At that time this machine did not have mechanism for putting the wire around the toe, but it had to drive tacks around the toe, just as they are driven on the sides in the exhibits of lasted shoes; but they had to be driven closer together around the toe on account of the crimping of the upper at the toe, and the greater thickness of the upper materials, including the box toe. In order to last a toe properly it was frequently desirable to give several pulls upon the same portion of the stock at the toe by the pinchers, and that could not be done, because since the machine drove a tack at every operation of the pinchers, the tacks would be driven one upon another. If they attempted to take hold of a portion of the stock near that or closely adjacent to that just acted upon, the tacks would be driven so close to gether that they would cut the stock and spoil the leather. Then, of course, the presence of some of those lasting tacks or of stay tacks, if they were driven to take their places, interfered seriously with the operation of the welting machine. The needles would break.

And more than that, until this wiring attachment was placed upon the machine the machine would not force the upper properly against the rib of the inner sole, and it was necessary to perform a subsequent hand operation upon the shoe by means of what was known as a "banging iron," one of which is defendant's Exhibit 340. Some factories had such irons shaped to fit the toe of every last which they were using, while in other factories a "banging iron" of curved contour was used step by step about the shoe. In using the "banging iron" the operator held it against the toe and struck it with a hammer at various places until he had succeeded in driving the upper stock inwardly against the rib of the insole. That was a subsequent additional hand operation for which operators were paid two and one-half cents per dozen.

These difficulties with the hand method welt machine affected its acceptable introduction among manufacturers.

The attachment for placing wire instead of tacks around the toe was first adopted and applied to the hand method welt lasting machine in January, 1900, in its original form. The wire attachment was improved a year later, but the machine really

reached a point of commercial success with the adoption of the first wire attachment.

As to the testimony of one witness for the United States that the Ideal machine lasts shoes better and is a better lasting machine than the No. 5, what I have to say to that is that for several years, and since some time prior to the beginning of this suit, it has been an accepted fact in the industry that the No. 5 machine did better work and more of it than the Ideal. That fact is capable of very easy and simple demonstration.

The difficulty in the successful use of both the Chase and the Ideal machines was due to the development of the industry
1211 towards the so-called crooked lasts. On lasts such as are used now and have been used for the past ten years the Ideal machine would not get the upper materials properly against the rib of the insole on the inside of the shoe, and it could not, for the reason that the wipers moved in a line which was the median line of the machine. They also could not get the upper stock, including the counter, properly against the side of the last, on the inside of the shoe, for a similar reason.

The essence of the No. 5 machine is that it incorporates the idea of moving the wipers at both toe and heel upon lines which bisect the toe and the heel. The heel-lasting mechanism is pivoted at a point which is the point of intersection of those two bisecting lines. It is swung to such a point that when the wipers at the toe move in they move upon that bisecting line at the toe; and when the wipers at the heel and the heel band move in, they move upon a line which bisects the heel end of the shoe.

The operations of the wipers of the Ideal and Chase machines at the heel and toe may be illustrated by the model of defendants' Exhibit 138 and the last pattern of defendants' Exhibit 139, the rib on which represents the rib of an insole.

The operation of the wipers of the No. 5 machine at the heel and toe are illustrated in the model of defendants' Exhibit 141, which may be demonstrated with the aid of the metal pattern of defendants' Exhibit 139. It will be observed that when the wipers of this model are moved in, they move alike on both sides of the toe, and when they come to rest in their final position they engage in the same way on both sides the metal rib on the pattern, which represents the rib of an insole. The wipers at the heel operate in the same way.

Also with this machine it was possible for the first time to force the counter into close engagement with the last on the inside of a shoe made on a crooked last. In the Ideal and Chase machines the heel band would engage the last at the end of the counter on

the outside of the shoe before the heel band on the inside of the shoe had got really near to the last. Consequently it was practically impossible to last properly the heel ends of shoes made on crooked lasts by either the Ideal or Chase machines.

After the No. 5 lasting machine was developed the demand from shoe manufacturers for Ideal machines ceased altogether, and most of them have been returned and exchanged for No. 5 machines. It was just the same in the case of the Chase machine.

As to the use of the Chase lasting machine on women's shoes, so far as I can learn the Chase lasting machine was never
1212 used, either before or after 1899, in lasting women's welt shoes. There was not one Chase lasting machine in Lynn, the great women's shoe center, in January, 1899. So far as I know, there has never been one there.

I obtained this information from records of the United Company. Lynn is the greatest center for making women's shoes. More shoes are made there than in any other city and they are all women's, or practically all.

Defendants' Exhibit 341 (Rec., p. —) is a list of the Plant patents claiming inventions embodied in the Plant machines.

Defendants' Exhibits 357 and 358, which are physical exhibits, comprise copies of the patents named in defendants' Exhibit 341.

Defendants' Exhibit 342 (Rec., p. —) is a list of the patents acquired from Plant, the inventions of which have been incorporated in the machines of the United Company.

1213 Defendants' Exhibit 359, a physical exhibit, comprises copies of the patents named in defendants' Exhibit 342.

Cross-examination:

I do not believe I have ever completely lasted a pair of shoes on a lasting machine, and my testimony about these several lasting machines is to be understood as technical information. It is not based upon experience that I have had in lasting shoes personally.

The McKay Shoe Machinery Company, with which I was connected prior to the formation of the United Company, did not have anything to do with lasting machines. While I was with that company I observed lasting machines when I was in shoe factories.

As to whether I said that shoe manufacturers would not take the hand method machines for welt work prior to the formation of the United Company—I did not intend to express it quite that way; thirty-four of them had been leased for use on welt shoes. Douglas had 17 Ideal machines but he was not using

them much. At that time he was manufacturing men's shoes exclusively. He had a large number of other machines. I think they were Chase machines. As to how I know that he was not using the Ideals—well, I don't know that my testimony on that point would be competent; I don't know it personally, from observation in his factory at that time. I have learned it from others. I suppose it is all hearsay; I don't doubt it is a fact, but perhaps I can't testify to it.

Prior to the formation of the United Company there were approximately 40 Ideal machines in factories where men's shoes were made exclusively. Douglas had 17; Whitman & Keith had 7; Ara Cushman, of Auburn, Maine, had 6; and Banister, of Newark, New Jersey, had 6. There were a few more in other factories. I don't know that there was one in Florsheim's factory then. I can ascertain. They were manufacturing men's shoes and women's also, I think, at that time. I don't know whether the Ideals were used there on men's shoes or not. I don't think they were.

In speaking of the Ideal machine I did not intend to include the Copeland rapid machine. That was practically obsolete in 1899.

Q. Was there any difference between the Copeland rapid and the Ideal?

A. There was a great deal of difference.

Q. What was it?

A. Practically the only similarity was the fact that both machines were organized for the upward wipe at the toe, and the constructions by which that effect was obtained were substantially different, radically different in the two machines. In all other respects the machines were substantially different; in most respects radically different.

Q. Then the Ideal machine was the better machine than the Copeland rapid?

A. Oh, yes, indeed.

Q. At the time the United was formed?

A. Yes, sir. The Copeland had practically been killed by the new high speed Chase lasting machine, which was introduced in 1895.

1214 Q. Now, taking the same grade of leather, the same weight of leather, Mr. Howard, in a man's shoe as is used in a woman's shoe, then there was nothing to prevent the Ideal machine from being used on both shoes, was there?

A. Yes, sir; because the dimensions of a man's shoe and a woman's shoe are substantially different. The power required

for lasting a man's shoe is much greater than that required for lasting a woman's shoe.

Q. I thought you said the principal difference was the weight of the leather—that the Ideal machine was too light for the men's shoes.

A. That was one difference. Your question excluded that, as I understood it. Now I am explaining that there is a more substantial reason in the size of the shoe, in the sizes of the shoes, in the way that they are put together. You assume, I understand, that the upper leather for the man's shoe and the woman's shoe that you are considering is the same, which is quite an assumption.

Q. To such an extent that it would not make any difference as far as the weight of the leather is concerned, the grade of the leather?

A. But the box toe is never the same. The box toe in a man's shoe is heavier and stiffer and must be because it has so much more to do——

Q. All men's shoes don't have box toes, do they?

A. Practically all. If they didn't have a box toe they would fall in at the toe.

Answering the question whether a good many men's shoes are not made without the box toe, perfectly smooth to the toe of the shoe—you are talking about a toe tip. That is not the box toe that you see there. The box is inside. The box is made of a stiff piece of sole leather or other material, and it is inserted between the upper leather and the lining at the toe. That is done regardless of the presence or absence of the toe tip. It is not a fact that anything more than a negligible proportion of the number of men's shoes made are made without box toes. Practically all men's shoes have box toes.

I said there were between 100 and 200 Ideal machines in factories where nothing but women's shoes were made, and fifty in factories where both men's and women's shoes were made. I know some of those factories. It is pretty hard to identify the Ideal machines used before 1899, because the records of the Goodyear Company were not nearly as complete as those of the Lasting Machine Company. I satisfied myself as to the kind of work done on nearly all of the machines by an extended investigation as to the kinds of shoes which were being made in 1899 by manufacturers using the machines.

1215 FEBRUARY 10, 1914.

SIDNEY W. WINSLOW, witness for defendants, recalled.

At the request of Judge Putnam I have prepared a statement with reference to the service rendered by the United Company,

showing the number of stations, the number of men employed, the expense or rendering the service, the investment in parts and any other useful details. This statement is as follows:

Memoranda requested by Judge Putnam regarding repair service, year 1911.

Men to repair machines and instruct operators were stationed in the following places:

Auburn, Me.; Haverhill, Mass.; Lynn, Mass.; Manchester, N. H.; Marlboro, Mass.; Brockton, Mass.; New York City, N. Y.; Rochester, N. Y.; Lestershire, N. Y.; Philadelphia, Pa.; Harrisburg, Pa.; Cincinnati, Ohio.; Chicago, Ill.; Milwaukee, Wis.; St. Paul, Minn.; St. Louis, Mo.; New Orleans, La.; San Francisco, Cal.

Also at the following substations:

Augusta, Me.; Gardiner, Me.; Rochester, N. H.; Nashua, N. H.; Derry, N. H.; Newburyport, Mass.; Auburn, N. Y.; Baltimore, Md.; Lancaster, Ohio.

Number of principal stations	18	
Number of substations	9	
		27
Number of men at stations		608
Salary and expense for service		$1,196,494.86
Investment in parts		$1,415,474.49
Number of new operators taught in shoe factories		8,889
Number of calls made		201,413
Average cost of each call		$5.95

In addition to the above there were thirty-four (34) men who traveled from the Boston office and gave special service to shoe manufacturers, such as economy and quality of manufacturing, rearrangement of factories, improved methods of manufacturing, etc.

Data relative to road service, year 1911, at branch office, Auburn, Maine.

Repair men and instructors located at Auburn	29
Number of new operators taught for manufacturers at Auburn during year	504
Total number of calls made	10,520

The WITNESS. A call means not only a request of us but also a compliance with the request by our sending a man.

1216 As to the percentage of the business of the United Company which is done within the State of Massachusetts, in 1912 thirty-nine and one-half per cent of the total number of shoes made in the United States by our machines were manufactured in Massachusetts.

As to papers filed by the petitioner to show that the United Company did not increase the item of patents in its trial balance after the acquisition of the Plant patents in 1910 and to show that it carried the patents at $400,000 in its trial balance sheet since that date, the United Company has carried its patents at that figure since 1903, although we spend several hundred thousand dollars every year in developing or taking out patents.

As to our accounts in connection with the cost of the Plant purchase, the United Shoe Machinery Corporation loaned to the company $3,000,000 in cash at the time of the purchase. On February 28, 1911, the stock of the Thomas G. Plant Shoe Company, the shoe manufacturing company, was transferred to the corporation and the company received credit for this $3,000,000 which it had borrowed. That stock has appeared among the assets of the corporation from that date until now.

The other $3,000,000 was carried in the account of leased machinery and stock of other corporations and it so appears in our balance sheet.

For a time after we made the purchase this was carried as a special item, until we had had opportunity to distribute it. We have now partially distributed it by adding $3,000,000 to the item, leased machinery and stock of other companies; and $3,000,000 has been transferred to and added to the assets of the corporation.

BROWN, J. I would like to inquire what the purpose of this return is.

Mr. CHOATE. It is the return required by the State laws of Massachusetts.

1217 BROWN, J. For the purpose of taxation, or simply in order that persons dealing with the corporation may know its credit?

Mr. CHOATE. I think it is partly both.

BROWN, J. For the latter purpose the more you omit the better you are conforming to the intent of the statute.

I have information with respect to the operations on lasting machines for the year 1899 and, as indicated by the returns made for the computation of royalties, a little over three-fourths of one per cent, or, to be exact, 0.77 of one per cent of all shoes reported lasted in the year 1899 were lasted on the Copeland rapid and Ideal machines. I obtained that information from the royalty returns.

Between forty-two and forty-three hundred lasting machines of all kinds were out on January 1, 1899, so that the 248 Ideal machines were about five per cent of the machines which were out.

I have been over the list of machines which Mr. Jones submitted the other day, and which purports to show the number of machines in the Commonwealth Shoe and Leather factory which were obtained from the United Company, and the number of machines obtained from others. In the list of machines which he says were obtained from the United Company I find 114 which are not machines, out of the total of 584 listed as obtained from the United Company. Of those 114, 73 are hand tackers. The hand tacker is a tool which is carried in the hand to drive the tacks used in lasting shoes with a bed lasting machine. It has no power and no power is used with it, and the operator drives the tacks as he would with a hammer. Hand tackers are not treated by shoe machinery men or shoe manufacturers as machines.

I also found, on Mr. Jones's list of what he calls machines obtained from the United Company, 36 extension edge attachments. That is the thing which is sometimes called the Baltimore edge attachment and is embodied in the outsole rapid stitcher for placing the stitches in right position on the outer sole. Mr. Jones called that a machine, as well as the machine to which it was attached.

(Examination of Mr. Winslow suspended, at request of counsel for defendants, to accommodate the next witness.)

1218 FEBRUARY 10, 1914.

BICKNELL HALL, witness for defendants, recalled.

In explanation of my previous testimony, the American Worsted Machinery Company makes eyeleting machines and they are sold for us by dealers, who are practically our agents.

FEBRUARY 10, 1914.

SIDNEY W. WINSLOW, witness for defendants, resumed.

Direct examination resumed:

Referring again to the 114 devices and attachments which Mr. Jones called machines on his list, five of those were old style beveling attachments. Those are attachments that go on the machine for beveling the welt. They are not machines at all.

Of the remaining 470 machines on his list which he calls machines obtained from the United Company, 119 machines are sold both by the United Company and by other people, so that he could have gotten them from others. Those machines are listed in defendants' Exhibit 343 (Record, p. —).

I was asked on cross-examination whether I could say how many of the 706 manufacturers who held machines on unre-

stricted leases in 1905 had principal machines on unrestricted leases. I have since had that looked up, and I have ascertained that there were 186 unrestricted leases of principal metallic machines, 536 unrestricted leases of heel attaching machines, and 322 unrestricted leases of lasting machines. Of the 706 manufacturers, only one had an unimportant machine on the unrestricted lease, a Busell heel trimmer, and eleven had machines of the heeling department upon which they paid royalty, other than the heel attaching machine which is a principal machine.

We began to put out the newly designed model B McKay sewing machine early in 1908. Just before or about that time we began to put out the Richardson design McKay sewing machine, which had been put out by the Richardson Company prior to that time.

I have made an investigation to determine what kinds of McKay sewing machines were in use in 1909 and by whom they were furnished. In the districts of Auburn, Brockton, 1219 Chicago, Cincinnati, Haverhill, Lynn, Marlboro, New Orleans, New York, Philadelphia, Rochester, San Francisco, and St. Louis, which comprise substantially the districts in which shoes are made, there were 155 model B McKay sewing machines, 153 Richardson machines, and 1,180 of the old style McKay sewing machines which were furnished by everybody, that is, there were 308 model B and Richardson machines out of a total of 1,488 machines. We had not begun to put those machines out until the year before, and prior to that time the market was supplied by the old style machines.

The situation is well illustrated in Lynn, where in 1909 there were 367 old style McKay sewing machines in the factories and 59 of the model B and Richardson combined.

Referring to the advertisements about the hand method welt lasting machine, which were offered by the United States, the situation with reference to the hand method welt lasting machine prior to the organization of the United Company was as follows:

The first introduction of the hand-method welt lasting machine was some time in 1897, and we were endeavoring to introduce that machine, and at the same time to perfect it. It has always been the custom of the company to perfect their machines by getting them into factories. Early in 1898, in the lasting of welt shoes by the bed machine principle, they had adopted the taping of the toes, thereby doing away entirely with the necessity for any tacks being used to hold the toe, which is a great advantage to the welt-sewing operation. As soon as that was adopted in the bed machine, really in the Chase, the manufacturers com-

menced to stop the use of the hand-method welt lasting machine. And while it is true that we had machines out it is true that they were not being accepted by the manufacturers and they were being sent out and coming back. We were trying all the time to keep them going.

We did not adopt the taping device on the hand method machine, but in 1900 we adopted the wiring device which performed the same function.

I do not know how many hand method welt machines we had out just prior to the organization of the United Company. There were only thirty-four of them leased. We were trying to hold them in the field, but we knew that they were not commercially successful. I did not have any personal knowledge of the advertising which the petitioner has put in evidence. I assume that it was entirely the work of our advertising men.

1220 Cross-examination:

Referring to my statement as to the number of shoes being manufactured on the Ideal lasting machine, based on the royalty, during the first year after the United Company was formed; there was a royalty on the Ideal machine prior to the time the United Company was formed. Prior to 1898 the custom of the Goodyear Company had been to put Ideal machines out on a large initial payment and no royalty, limited to use with Goodyear welt sewing and outsole stitching machines. The best of my recollection is that early in 1898 the Goodyear Company abandoned that policy, and adopted the policy of putting them out on an initial premium of $300 with a royalty of half a cent a pair.

In respect to the $400,000 that we carry in our financial statement as patent rights, I can not state what the amount was prior to 1903, but we carried them at $408,000 in 1903, and at $400,000 in 1904, and they have remained at that figure ever since.

In respect to the 119 machines which Mr. Jones claimed he had from the United Company, and which I testified might have been obtained from some one else, I do not know as a matter of fact whether or not any of those machines were obtained from others, and it is possible that they were all obtained from our company. I assume that Mr. Jones was correct in stating that they were obtained from our company.

The auxiliary devices and attachments on Mr. Jones's list, about which I testified, were obtained from our company, but they are not machines nor are they listed by us as machines. In making up his total number of machines he has counted attach-

ments as machines, in his comparison with machines obtained from other people.

On my memorandum regarding repair service for 1911, the item "Investment in parts, $1,415,474.49" does not include the parts that are carried for the manufacture of machines. It is not the entire amount that we have invested in parts, but 1221 is the investment in the stock of parts which we carried during the year 1911 in order to furnish the service of putting machines in repair. It is not the entire amount that we have invested in parts. It does not include any parts for new machines.

The item on that memorandum "Salary expense for service, $1,196,494.86" is the expense of keeping up the branch offices throughout the country so far as allotted to the expense of the service, but not in connection with the selling organization. Those figures on that memorandum are confined strictly to the service.

The 201,413 calls made were all cases where a manufacturer made a request for a man to come to his factory. It may have been a request for repairs, or a request for a man to come to their factory to adjust machines, or service of that sort.

Mr. CHOATE. While the United States was putting in its case attention was called to the fact that the United Shoe Machinery Company carried out its plan for the distribution of stock to people who observed the conditions of their leases, and we asked Mr. Fowler to produce a letter which we sent to the Attorney General, advising him of the fact that we were going to carry out the plan, and he produced it. And I desire to put it in. It is dated February 7th, 1913.

PUTNAM, J. Have you any objection, Mr. Gregg?

Mr. GREGG. No objection. I don't see what effect it has, but I have no objection.

Mr. CHOATE. It was addressed to Mr. Wickersham. It is as follows:

DEFENDANTS' EXHIBIT 344.

CHOATE, HALL, & STEWART,
Boston, Mass., Feb. 7, 1913.

Hon. GEORGE W. WICKERSHAM,
Attorney General, Department of Justice, Washington, D. C.

MY DEAR MR. WICKERSHAM: In 1910 the United Shoe Machinery Company advised its lessees that it proposed to put in effect a plan by which a certain proportion of the royalties should be invested in stock of the corporation, and at the end of a fixed term be distributed to lessees of the Goodyear welt-

ing and stitching and turn-sewing machines, who had in all respects observed the obligations of their leases. The period covered by this plan expired December 31, 1912, and the company proposes to make a distribution on or about March 1st, as it is bound to do by its agreement with the customers.

1222 This plan was, I think, fully called to the attention of Mr. Gregg while he was here examining the affairs of the company and as I read the bill in equity filed by the United States against the company, it does not seem that any complaint is made upon this ground. Under these circumstances, the Company proposes to make the distribution provided for in that plan on the first day of March, or as soon as possible thereafter; and has desired me to call the matter to your attention that the plan may not be carried out without the knowledge of your department.

I send you herewith a copy of the circular of June 10th, 1910, which describes the plan.

Very truly, yours,

CHAS. F. CHOATE, jr.

(Here follows a copy of the circular of June 10, 1910, which is plaintiff's Exhibit 146, Record, p. —.)

Mr. GREGG. Was that acknowledged, Mr. Choate?

Mr. CHOATE. That was never acknowledged or answered, but it was produced and it appears that it has been received.

PUTNAM, J. Who was it signed by?

Mr. CHOATE. I signed it.

PUTNAM, J. In behalf of the corporation?

Mr. CHOATE. Yes, sir.

PUTNAM, J. You signed it as counsel for the corporation?

Mr. CHOATE. No, sir; I just signed my name, but he knew I was counsel for the corporation.

His Honor Judge Putnam asked about the price at which the United Company carried its patents prior to 1903. Plaintiff's Exhibits 180, 181, and 182 give those figures. In 180 the financial condition March 1st, 1901, shows patent rights $745,269.27. The statement of financial condition March 1st, 1902, shows they were marked down to $571,332.23, and March 1st, 1903, marked down still further to $408,021.75; and from that date on each annual exhibit shows they carried them at just $400,000.

1223 FEBRUARY 10, 1914.

HAROLD G. DONHAM, witness for defendants, recalled.

The pulling-over lease of plaintiff's Exhibit 37 was reprinted several times before the adoption of the lease of plaintiff's Ex-

hibit 38 in 1909, and in the reprinted leases the additional machinery clause had been stricken out long prior to 1909. Defendants' Exhibit 345 is a redraft of the lease of Exhibit 37, containing substanially, the same terms, but with the additional machinery clause omitted. That lease was ready for use at least as early as 1907, and it may have been earlier than that; I found copies in use dated as early as 1907.

Cross-examination:

Leases of the form of defendants' Exhibit 345 were executed and put out to shoe manufacturers. Whenever that lease was printed it superseded the lease of plaintiff's Exhibit 37, which was the first one we got up for the pulling-over system, and which was reprinted several times before we got to the lease of plaintiff's Exhibit 38. There were some substantial changes in the lease of Exhibit 38.

After the lease form of defendants' Exhibit 345 was adopted, if there were machines outstanding on leases of plaintiff's Exhibit 37 they would not be called in, except as they came in in the ordinary course of trade, were exchanged for other machines, and the later forms of lease were taken.

1224 JANUARY 14, 1914.

Discussion of petitioner's motions to strike out certain testimony taken before the examiner.

Mr. FOWLER. The first motion is to strike out all the evidence with reference to patents, introduced before the examiner with reference to patents and machines which was not responsive to the evidence introduced by the United States.

The second one is to strike out all patents and all evidence with reference to patents which were issued after the filing of the petition.

Let me make a statement, your honors, which I think my associates will agree with. Of course, we are not here to discuss the general patent question or to insist that the defendants in this case have not got a perfect right to put this testimony into the record—that is, the testimony that was taken before the examiner. But our position is that they did not have any right under that order to introduce it before the examiner. Now, as I understand Mr. Fish and Mr. Choate, they insist that if it is stricken out, which I think your honors would probably have to do under the terms of the order, they would have to introduce it before your honors in open court.

Mr. FISH. Exactly.

Mr. FOWLER. Now, of course we don't want to go through that again. But you can see the position which we are in here. Mr. Webster had to do just as he did do, and the consequence is that he did not cross-examine the witnesses as to those matters, nor did he introduce testimony in rebuttal to it. Now, I think that I can state this—that we are willing to treat that testimony as in if your honors will give the opportunity for that matter to be taken up before the examiner—unless your honors want it to be done in open court—and let Mr. Webster have an opportunity to cross-examine the witnesses on those matters and to introduce what evidence he wants to in rebuttal of that testimony relating to those various machines.

1225 BROWN, J. Well, you allege in substance that here was a clear unpatented field in which people would be dealing as free agents.

Mr. FOWLER. As to the basic patents on the essential machines.

BROWN, J. As to the principal machines in the art. The defendants meet that by showing a very large number of patents in that field, which meets your allegations as to a free field. They show a legally monopolized field as distinguished from what you say would have been the field of free, unrestricted competition.

Mr. FISH. They say there is a fundamental patent expiring in 1910, or a patent which we assume they are going to call a fundamental one, or a basic patent, because they put it in. We want the right to say that at that time that patent had been supplanted by another invention—the invention of that patent had been supplanted by another invention which was enormously better and which the public demanded. That invention was the subject of an application which came out the day after the bill was filed, and we think we have a right to say that. We also think we have a right to say that at the time of the expiration of this patent in 1910 we had procured or made another invention germane to that machine, embodied in the machines we were putting out, and which our customers insisted upon having under their leases, which was vastly more important than this one that expired, more truly basic, more nearly bringing that machine into the status of a principal machine because it was such a step in advance. That invention had been made, had been worked out, had been put into the machine. The application was filed in 1908. That particular patent happened to come out the day after the bill was filed by the Government. What difference does it make, may it please the court, whether

it came out the day after or the day before? Those particular inventions are the things that are of importance, and their effect upon giving character and standing and position to our machines. We want to show that fact.

1226 Mr. WEBSTER. It seems to me it is important to learn at an early date, however, whether patents issued after the filing of the bill and machines made under those patents are to be considered by the court.

DODGE, J. Applications that were pending, before the filing of the bill?

Mr. WEBSTER. Yes. In one or two instances I think there are patents introduced where applications were filed after the filing of the bill. If they were introduced, it was accidental.

PUTNAM, J. They were only very limited.

Mr. GREGG. We take the position that the testimony went in before the examiner without any authority under the order, and Mr. Fish and Mr. Choate take the other view of it. So far as having that question passed upon, I don't care anything about it at all. All I am interested in now is an opportunity to cross-examine Mr. Howard with respect to that testimony, and put in such testimony as we may deem proper in reply to the testimony introduced by the defendant.

Mr. FISH. Why wouldn't it settle the whole thing if the objection were withdrawn and we submit Mr. Howard to further cross-examination and consent to their taking the testimony in rebuttal to Mr. Howard's testimony before the master? Isn't that all right? I mean assuming that you come to that conclusion.

Mr. CHOATE. I agree to that.

Mr. FISH. Then there will be no order, no stipulation or anything, except an understanding that we shall all live up to, which the court will enforce if necessary.

BROWN, J. It will be an understanding in open court taken by the stenographer.

Mr. FISH. Certainly.

Stipulation.

1227 (January 14, 1914—Filed January 19, 1914.)

"With reference to the motions of the United States relating to the admission of testimony before the special examiner, which motions are shown by and printed in the record on pages 2841 ( ) and 2846 ( ), the United States withdraws its motions and waives its objections founded on the claim that the evidence was improperly taken before the special examiner,

reserving all other objections for irrelevancy and incompetency heretofore or hereafter made, with the understanding, to which the court assents and agrees, that the United States may make further cross-examination or introduce evidence in rebuttal with reference to the matters to which the objections and motions relate, the further examination and cross-examination to proceed before the special examiner or proceed at the resumption of the hearings on the 3rd of February in open court, as the parties may hereafter agree or the court may order."

FEBRUARY 10, 1914.

1228 *Order of February 10, 1914.*

In the course of the discussion of the form of the order entered February 10, 1914 (infra, p. —), the following statements were made by counsel and the court.

Mr. GREGG. Mr. Webster suggests that in order that there may be no doubt about our expert testifying in connection with the machines obtained from Mr. Plant, that is, the application of the patents to the machines, that in the last part of the first paragraph of the order it should read:

"with respect to patents and machines obtained by the defendants from Thomas G. Plant."

Mr. CHOATE. Well, we didn't obtain any machines from him. We obtained patents and inventions.

Mr. GREGG. As I understand it, what Mr. Webster wishes is to compare the patents with the machines for the purpose of ascertaining whether or not the machines are constructed in accordance with the patents.

Mr. CHOATE. Well, that he has been doing as he wanted to. We have been giving him every opportunity to do it.

Mr. WEBSTER. Why, I think in order to avoid any disagreement we ought to have it understood that the order is sufficiently broad to allow our expert to examine the machines and compare the structure of the machines with the patents in order to determine the question as to whether the machines are constructed as set out in the patents.

Mr. CHOATE. Well, I don't understand that that is a proper subject for the order. They have requested an opportunity to see the machines and we have put them at their disposal. They have had every opportunity they desire; but if you mean simply that the witness may testify as to whether he finds the patents in the machines, why, I should think that was a matter of course. Of course he would.

1229 Mr. WEBSTER. This goes to the question of the scope of the testimony in interpreting the patents and comparing the machines with them.

BROWN, J. You mean the Plant machines in the Plant factory?

Mr. GREGG. The Plant machines, as I understand it.

Mr. WEBSTER. The Plant machines, and also the machines of the United Company which it is alleged have incorporated in them the inventions of the Plant patents.

Order.

(February 10, 1914.)

PUTNAM, DODGE, and BROWN, JJ. With the consent of the parties, it is ordered that the United States shall have from February 24 to March 10, 1914, inclusive, for further cross-examination of Nelson W. Howard and the introduction of evidence in rebuttal before the special examiner, Charles K. Darling, with reference to the matters provided for in the order entered in this cause on January 14, 1914; and also to introduce evidence before the special examiner in rebuttal to evidence submitted by the defendants in open court with respect to patents and machines obtained by the defendants from Thomas G. Plant.

And the defendants shall have from March 11 to March 24, 1914, inclusive, to introduce evidence in surrebuttal with respect to the evidence of the United States relating to matters provided for in the order of January 14, 1914, and evidence introduced by the United States before the special examiner with respect to patents and machines obtained by the defendants from Thomas G. Plant.

The court reserves control of the proceedings before the special examiner.

By the court:

CHARLES K. DARLING, *Clerk*,
By JOHN E. GILMAN, Jr.,
Deputy Clerk.

C. F. C., Jr.
Wm. S. G.

1230 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

This volume is one of the volumes of testimony and exhibits referred to in the order of court, entered June 19, 1916.

Attest:

[SEAL.] WILLIAM NELSON, *Clerk.*

1232 District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, of New Jersey, et al.	In Equity. No. 301 (C. C. 911).

Petition.

[Filed December 12, 1911.]

To the honorable the Judges of the Circuit Court of the United States for the District of Massachusetts, sitting in equity:

The United States of America by Asa P. French, its attorney for the district of Massachusetts, acting under the direction of its Attorney General, brings this proceeding in equity against United Shoe Machinery Company, of New Jersey; United Shoe Machinery Corporation; United Shoe Machinery Company, of Maine; United Shoe Repairing Machine Company; United-Xpedite Finishing Company; United Awl & Needle Company; United Fast Color Eyelet Company; O. A. Miller Treeing Machine Company; W. W. Cross & Company, Inc.; S. A. Felton & Son Company; Campbell-Bosworth Machinery Company; Boston Blacking Company; J. C. Rhodes & Com-
1233 pany (Inc.); The Rimmon Eyelet Company; Ross-Moyer Manufacturing Company; J. K. Krieg Company; Booth Brothers Company; S. O. & C. Corporation; Ellis Lacer Company; Thomas G. Plant Company; Sidney W. Winslow; William Barbour; Wallace F. Robinson; George W. Brown; Edward P. Hurd; John H. Connor; Louis A. Coolidge; Edwin P. Brown; Frank L. Babbott; Henry B. Endicott; Edmund LeB. Gardner; John H. Hanan; Elmer P. Howe; Joseph C. Kilham; George E. Keith; Rudolph Matz; Charles G. Rice; Alfred R. Turner; Samuel Weil; Frank Wood; William Woodward; Edward N. Chase, and Harold G. Donham.

On information and belief, your petitioner alleges and shows:

I.

DESCRIPTION OF DEFENDANTS.

United Shoe Machinery Company, of New Jersey, is a corporation organized under the laws of New Jersey, carrying on business in the district of Massachusetts, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is		$20,850,519.00
Preferred	$9,971,584.50	
Common	10,878,934.50	

United Shoe Machinery Corporation is a corporation organized under the laws of New Jersey, with its offices and place of
1234 business at Boston, Mass., where its president, Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $38,114,833.75
Preferred ---------- $9,515,400.00
Common ---------- 28,599,433.75

United Shoe Repairing Machine Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $50,000

United Shoe Machinery Company, of Maine, is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $3,000,000

United-Xpedite Finishing Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $1,000,000

United Awl & Needle Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

1235 Its issued capital stock is ---------- $56,100
Preferred ---------- $13,700
Common ---------- 42,000

United Fast Color Eyelet Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $1,478,600
Preferred ---------- $478,600
Common ---------- 1,000,000

O. A. Miller Treeing Machine Company is a corporation organized under the laws of Maine, with its offices and place of business at Brockton, Mass. Its president is defendant Sidney W. Winslow.

Its issued capital stock is ---------- $200,000

W. W. Cross & Company (Inc.), is a corporation organized under the laws of Maine, with its offices and place of business at Brockton, Mass. Its president is defendant Sidney W. Winslow.

Its issued capital stock is ---------- $200,000
Preferred ---------- $100,000
Common ---------- 100,000

S. A. Felton & Son Company is a corporation organized under the laws of Maine, with its offices and place of business at Manchester, N. H. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $40,000

1236 Campbell-Bosworth Machinery Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is---------- $500,000

Boston Blacking Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.

Its authorized capital stock is---------- $600,000

J. C. Rhodes & Company, Inc., is a corporation organized under the laws of Maine, with its offices and place of business at New Bedford, Mass. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $600,000

The Rimmon Eyelet Company is a corporation organized under the laws of Connecticut, with its offices and place of business at Seymour, Conn. Its president is defendant Harold G. Donham.

Its issued capital stock is---------- $200,000

Ross-Moyer Manufacturing Company is a corporation organized under the laws of Ohio, with its offices and place of business at Cincinnati, Ohio. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $197,400

J. K. Krieg Company is a corporation organized under the laws of New York, with its offices and place of business at New York City. Its president is defendant Sidney W. Winslow.

1237 Its issued capital stock is---------- $50,000

Booth Brothers Company is a corporation organized under the laws of New York, with its offices and place of business at Rochester, N. Y. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $25,000

S. O. & C. Corporation is a corporation organized under the laws of Maine, with its offices and place of business at Ansonia, Conn. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $740,000

Ellis Lacer Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass. Its president is defendant Edward N. Chase.

Its issued capital stock is---------- $50,000

Thomas G. Plant Company is a corporation organized under the laws of New Jersey, with its offices and place of business at Boston, Mass.

Its issued capital stock is---------- $3,750,000

Preferred---------- $2,500,000

Common---------- 1,250,000

Individual defendants Frank L. Babbott, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, John H. Connor, Alfred R. Turner, Wallace F. Robinson, Samuel Weil,
Frank Wood, and William Woodward are directors of United
1238 Shoe Machinery Company, of New Jersey, and United Shoe
Machinery Corporation, attend the meetings of the boards, participate in the direction and management of the business of said companies, and are responsible therefor.

Defendant Sidney W. Winslow is president and director of United Shoe Machinery Company, of New Jersey; United Shoe Machinery Corporation; United Shoe Repairing Machine Company; United Shoe Machinery Company, of Maine; United-Xpedite Finishing Company; United Awl & Needle Company; United Fast Color Eyelet Company; O. A. Miller Treeing Machine Company; W. W. Cross & Company (Inc.); S. A. Felton & Son Company; Campbell-Bosworth Machinery Company; J. C. Rhodes & Company (Inc.); Ross-Moyer Manufacturing Company; J. K. Krieg Company; Boston Blacking Company; Booth Brothers Company; and S. O. & C. Corporation. Defendant Winslow attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant William Barbour is vice president and director of United Shoe Machinery Company, of New Jersey, and United Shoe Machinery Corporation; a director of United Shoe Repairing Machine Company, and United Shoe Machinery Company, of Maine, attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible
therefor.

1239 Defendant George W. Brown is vice president and director of United Shoe Machinery Company, of New Jersey; United Shoe Machinery Corporation; and Campbell-Bosworth Machinery Company; a director of Booth Brothers Company, Boston Blacking Company, and W. W. Cross & Company (Inc.), attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant Edward P. Hurd is vice president and director of United Shoe Machinery Company, of New Jersey, and United Shoe Machinery Corporation; J. C. Rhodes & Company (Inc.); J. K. Krieg Company; Booth Brothers Company; S. O. & C. Corporation; United Shoe Repairing Machine Company; United Fast Color Eyelet Company; United Shoe Machinery Company, of Maine; a director of O. A. Miller Treeing Machine Company; W. W. Cross & Company (Inc.); S. A. Felton & Son Company; United-Xpedite Finishing Company; United Awl & Needle Company, and Boston

Blacking Company, attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant Louis A. Coolidge is a director of United Shoe Machinery Company, of New Jersey; United Shoe Machinery Corporation; O. A. Miller Treeing Machine Company; United Awl
1240 & Needle Company; J. K. Krieg Company; Ellis Lacer Company; United Shoe Machinery Company, of Maine; United-Xpedite Finishing Company; J. C. Rhodes & Company (Inc.); United Shoe Repairing Machine Company, and United Fast Color Eyelet Company; attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant Edwin P. Brown is a director of United Awl & Needle Company and J. C. Rhodes & Company (Inc.), attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant Edward N. Chase is president and director of Ellis Lacer Company.

Defendant Harold G. Donham is a director of The Rimmon Eyelet Company, attends the meetings of the board, participates in the direction and management of the business of said company, and is responsible therefor.

Defendants George W. Brown, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Henry B. Endicott, Elmer P. Howe, Edward P. Hurd, Joseph C. Kilham, George E. Keith, Charles G. Rice, Wallace F. Robinson, Harold G. Donham, Sidney W. Winslow, and Frank Wood are residents of the State of Massachusetts and may be found therein.

1241 Defendants Frank L. Babbott, William Barbour, John H. Hanan, Samuel Weil, and William Woodward are residents of the State of New York and may be found therein.

Defendant Rudolph Matz is a resident of the State of Illinois and may be found therein.

Defendants Edmund LeB. Gardner and Alfred R. Turner are residents of the State of New Jersey and may be found therein.

The defendants are engaged in trade and commerce in the manufacture, shipment, sale, and lease of machines, machinery, mechanisms, tools, and devices used in the manufacture of boots and shoes, among the several States of the United States and with foreign nations, and have combined, contracted, and conspired to restrain interstate and foreign trade and commerce and have monopolized and attempted to monopolize the same, all as hereinafter set forth, in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful

restraints and monopolies," and subsequent acts. This proceeding is instituted by the United States of America, under the direction of its Attorney General, to prevent and restrain defendants and each of them from maintaining and engaging in the unlawful combinations, contracts, and conspiracies aforesaid, and from monopolizing and attempting to monopolize the interstate and foreign trade and commerce aforesaid.

1242

II.

DEVELOPMENT AND USE OF SHOE MACHINERY.

Among the important industries of the United States is that of the manufacture, sale, and lease of machines, mechanisms, tools, and devices (hereinafter referred to as shoe machinery) used in the manufacture of boots and shoes. For twenty-five years last past practically all of the boots and shoes worn by the people of the United States have been manufactured by the aid and use of several different kinds of machines which have been and now are indispensable to the manufacture of boots and shoes in quantities sufficient to meet the demands of the public. Consequently, manufacturing plants where boots and shoes are produced by the aid and use of machinery have come into existence at divers places in the United States, there now being about thirteen hundred of such concerns, which are hereinafter referred to collectively as boot and shoe manufacturers.

The principal essential machines used in the manufacture of boots and shoes may be grouped as follows:

Lasting machines: Those designed and used for the purpose of lasting the uppers of boots and shoes.

Welt-sewing machines and outsole-stitching machines: Those designed and used for the purpose of sewing the seam which attaches the upper to the outsole of a turn shoe, and the seam which
1243 attaches the upper and welt to the insole of a welt shoe, and for sewing the welt of a welt shoe to its outsole.

Heeling machines: Those designed and used for preparing and attaching the heels of boots and shoes.

Metallic-fastening machines: Those designed and used for the purpose of preparing and inserting metallic fastenings in boots and shoes.

Some of the shoe machinery and parts thereof mentioned and described in the above groups have been and are manufactured under letters patent of the United States and of other countries. The variety of such shoe machinery and the letters patent covering the same are so great in number as to make it impracticable to set forth in this petition a detailed description of each machine and the parts thereof or of the letters patent covering the same.

III.

CONDITION OF THE TRADE IN SHOE MACHINERY PRIOR TO 1899.

For many years prior and down to February, 1899, a large number of individuals, partnerships, and corporations were engaged in the United States in the manufacture of shoe machinery and in competition with each other in its sale and lease among the several States of the United States and in foreign countries, each con-
1244 cern striving to improve its machines already on the market and to design and install new ones. The principal concerns so engaged in said shoe machinery industry were the following:

Goodyear Shoe Machinery Company, a corporation of Maine, issued capital stock $3,000,000 (120,000 shares, par value $25 each), International Goodyear Shoe Machinery Company, a corporation of Maine, issued capital stock $1,000,000 (40,000 shares, par value $25 each), and Goodyear Shoe Machinery Company of Canada, a corporation of Maine, each having its principal factory at Boston, Massachusetts, were engaged in the manufacture of machines used for sewing the seam which attaches the upper to the outsole of a turn shoe, and the seam which attaches the upper and welt to the insole of a welt shoe, and for sewing the welt of a welt shoe to its outsole, and machines used for lasting the uppers of boots and shoes. These companies manufactured 80 per cent of all such sewing machines, and 10 per cent of all such lasting machines manufactured in the United States. The said International Goodyear Shoe Machinery Company and Goodyear Shoe Machinery Company of Canada were controlled, through stock ownership or otherwise, by said Goodyear Shoe Machinery Company. All were engaged in trade and commerce among the several States of the United States and in Great Britain, France, Belgium, Germany, Austria, and the Dominion of Canada.

1245 Consolidated & Mcay Lasting Machine Company, a corporation of Maine, issued capital stock $2,888,600 (91,544 shares common and 24,000 preferred, par value $25 each), with its principal factory at Beverly, Massachusetts, was engaged in the manufacture of machines, and parts thereof, designed and used for lasting the uppers of boots and shoes, and in interstate and foreign trade and commerce in such machines, and parts thereof. This company manufactured 60 per cent of all such lasting machines manufactured in the United States.

McKay Shoe Machinery Company, a corporation of Maine, issued capital stock $5,000,000 (500,000 shares, par value $10 each), with its principal factory at Winchester, Massachusetts, was engaged in the manufacture of machines, and parts thereof, designed and used

for preparing heels and for attaching them to boots and shoes, and machines, and parts thereof, designed and used for metallic fastenings, and also in interstate and foreign trade and commerce in such machines, and parts thereof. This company manufactured at least 70 per cent of all such heeling machines, and at least 80 per cent of all such metallic fastening machines made in the United States.

Eppler Welt Machine Company, a corporation of Maine, issued capital stock $600,000, and International Eppler Welt Machine Company, a corporation of Maine, issued capital stock $500,000, each with its principal factory at Boston, Massachusetts, were
1246 engaged in the manufacture of machines, and parts thereof, used for sewing the seam which attaches the upper to the outsole of a turn shoe, and the seam which attaches the upper and welt to the insole of a welt shoe, and for sewing the welt of a welt shoe to its outsole, and also in interstate and foreign trade and commerce in such machines, and parts thereof. These companies manufactured at least 10 per cent of all such sewing machines manufactured in the United States. The said International Eppler Welt Machine was owned and controlled by said Eppler Welt Machine Company and its stockholders.

Davey Pegging Machine Company, a corporation of Maine, issued capital stock $200,000, with its principal factory at Boston, Massachusetts, was engaged in the manufacture of machines, and parts thereof, used for attaching the outsole to the insole of boots and shoes by means of wooden pegs or other fastenings, and in interstate and foreign trade and commerce in such machines, and parts thereof. This company manufactured 75 per cent of all such pegging machines manufactured in the United States; and it was owned and controlled by the Consolidated & McKay Lasting Machine Company, hereinbefore mentioned.

Early in 1899 the companies above mentioned and described were manufacturing their machines, and parts thereof, under letters patent of the United States and of other countries. Many of the
1247 basic patents on the principal machines owned and controlled by them were about to expire, and, in the ordinary course of events, the general public would have acquired in the near future the right to the free manufacture and use of such machines, the lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end, and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competitive conditions. Furthermore, under the conditions then existing, new patents were being constantly taken out by others, and new and improved machines for performing the principal operations in the manufacture of boots and shoes by the aid and use of machinery were being placed

upon the market, either upon a smaller royalty than had theretofore been charged for machines doing similar work or for sale outright to boot and shoe manufacturers.

IV.

ORGANIZATION OF UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ITS PURPOSES AND OPERATIONS.

Defendants Sidney W. Winslow, William Barbour, Elmer P. Howe, John H. Hanan, George E. Keith, Edward P. Hurd, George W. Brown, Wallace F. Robinson, Rudolph Matz, and others, owners, officers, directors, and agents of said Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Goodyear Shoe Machinery Company, of Canada, Consolidated & McKay
1248 Lasting Machine Company, McKay Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, and Davey Pegging Machine Company, not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States and of other countries, which they had enjoyed for many years, pertaining to shoe machinery, and parts thereof, and designing and intending unduly, unreasonably, and unlawfully to extend, expand, and perpetuate said monopolies and rights and to enhance the value thereof at the expense of the boot and shoe manufacturers and of the public generally, and to use the same as a means for unlawfully controlling interstate and foreign trade and commerce in shoe machinery to a greater extent than was warranted by said letters patent, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, destroy existing competition among the manufacturers and dealers in such machinery, and through unlawful combinations and agreements to exclude all others from said trade and commerce. For the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery
of whatever kind necessary or useful to such manufacturer
1249 of shoes, and thereby to exclude all competition by other manufacturers of such shoe machinery and to monopolize the trade and commerce therein among the States and with foreign countries. The various contracts, combinations, conspiracies, and acts, hereinafter described, were steps in carrying out the above-mentioned unlawful project. A preliminary agreement was made, and

in February, 1899, they incorporated United Shoe Machinery Company, under the laws of New Jersey, with an authorized capital of $25,000,000 ($12,500,000 preferred, $12,500,000 common), with broad powers under its charter to manufacture, buy, sell, lease, operate, and deal in and with all kinds of machinery, tools, and implements, and especially in everything in any way connected with or used in the manufacture of boots and shoes. For the stock allotted to each, and for cash, at values far in excess of real worth, four of the old concerns, to wit, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, and McKay Shoe Machinery Company, conveyed to the new corporation, as going concerns, their business of manufacturing, selling, leasing, and dealing in shoe machinery, including their letters patent of the United States and of other countries, and all property and rights used in connection therewith, wherever situated; and their principal owners, managers, di-
1250 rectors, and officers became managers, directors, and officers of the new company. Stock of the new company was allotted and received as follows:

Goodyear Shoe Machinery Company (issued capital, $3,000,000)		$4,800,000
Preferred	$2,400,000	
Common	2,400,000	
International Goodyear Shoe Machinery Company (issued capital, $1,000,000)		$680,000
Preferred	$340,000	
Common	340,000	
Consolidated & McKay Lasting Machine Company (issued capital, $3,000,000)		$4,599,840
Preferred	$2,199,840	
Common	2,400,000	

In addition to the stock acquired from the new company, the holders of preferred stock of said Consolidated & McKay Lasting Machine Company received $1 in cash for each share thereof (total, $24,000), and its holders of common stock received for each share thereof, in addition to stock in the new company, $4.50 in cash (total, $432,000).

McKay Shoe Machinery Company (issued capital, $5,000,000)		$5,500,000
Preferred	$2,750,000	
Common	2,750,000	

1250½ At the time of the organization of the new company a syndicate was formed by the owners, officers, and directors of the

old companies, which subscribed and paid for a certain amount of its common and preferred stock at par, as follows:

50,854.70 shares preferred	$1,271,367.50
44,962.70 shares common	1,124,067.50
	$2,395,435.00

That amount was used to pay the expenses of the organization of the new company, the floating debts of all of the old companies, and for the purchase of the capital stock, property, business, and letters patent of each said Eppler Welt Machine Company, International Eppler Welt Machine Company, and Goodyear Shoe Machinery Company of Canada, and there was left a balance of $500,000 in cash as working capital for the new company.

V.

LEASE AND LICENSE AGREEMENTS, CONTAINING EXCLUSIVE-USE AND TYING PROVISIONS, WHICH DEFENDANTS HAVE DEVISED, ADOPTED, AND USED, AND ARE NOW USING, FOR THE PURPOSE OF DESTROYING COMPETITION.

By the organization of United Shoe Machinery Company, of New Jersey, and the taking over by that company of substantially all of the capital stock and the businesses and assets of each of the old concerns hereinbefore mentioned, defendants acquired control of
1251 the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines hereinbefore mentioned and described, manufactured, sold, and leased to boot and shoe manufacturers in the United States.

Prior to the organization of United Shoe Machinery Company, of New Jersey, boot and shoe manufacturers, purchasing or leasing machines from one of the aforesaid companies, were not compelled to use exclusively machines mentioned in the aforesaid groups manufactured by either of the other companies. For example, the shoe manufacturer who held lasting machines under lease from the Consolidated & McKay Lasting Machine Company was not required to use, in connection with that company's lasting machines, welt-sewing machines or outsole-stitching machines of the Goodyear Shoe Machinery Company, or those of any other company, and he was free to obtain such machines wherever he could procure them to the best advantage. The same was true of the trade in welt-sewing machines and outsole-stitching machines, heeling machines, and metallic fastening machines. Defendants, however, not being satisfied or contented with said portion of the trade and commerce in shoe machinery which they acquired through the organization of United

Shoe Machinery Company, of New Jersey, and with the intent to acquire complete control of the business of manufacturing and selling or leasing shoe machinery among the States and with foreign
1251½ countries, to exclude all others therefrom, to enhance the cost of said machines to users thereof, and to wrong and to oppress the public, discontinued the sale to boot and shoe manufacturers of each and all of the machines included in said groups of machines, and unlawfully devised, adopted, and put into effect arbitrary, oppressive, and unreasonable lease and license agreements, which boot and shoe manufacturers have been and are required to agree and conform to in order to obtain from said defendants any of the machines included in said groups. These agreements contain provisions, not found in their former lease and license agreements, which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines owned and controlled by them, upon penalty of having all the machines included in said groups so leased to them by defendants immediately reclaimed and taken away and the lease and license agreements canceled. These contracts further require boot and shoe manufacturers to take each of said machines for a period of not less than 17 years, regardless of the terms of the patents relating thereto. Lessees thereunder are compelled to obtain all duplicate parts, extras, mechanisms, and devices of every kind needed or used in operating, repairing, or renewing the leased machinery from defendants, at exorbitant prices fixed by them from time to time. Many of
1252 these agreements further provide that the lessee shall, at the expiration of 17 years, and after he has paid large royalties throughout that period, if he shall then have no further use for the machines, return the same to defendants at their factory at Beverly, Mass., and shall pay to them a return charge, which in some cases amounts approximately to the original cost of building the machines. Defendants have continually, persistently, and arbitrarily enforced the provisions of said lease and license agreements by all the means in their power as against the boot and shoe manufacturers, and have made it their general policy and practice to refuse to furnish such machines to any and all boot and shoe manufacturers who fail to comply with the terms or spirit of the provisions of said lease and license agreements, and to otherwise injure them.

Defendants, in pursuance of their general purpose, inserted in, and made a part of, each lease and license agreement, provisions reserving to themselves the right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers if the latter should fail or cease to use

exclusively and to their full capacity machines leased or controlled by defendants, thereby prohibiting said manufacturers not only from using competing shoe machinery manufactured in the United States, but also from using any such machinery manufactured in foreign countries and imported here for sale or lease.

1253 Copies of specimen forms of lease and license agreements, containing provisions, as aforesaid, which have been and are now in general use (or others substantially similar thereto) as lease contracts between defendants and boot and shoe manufacturers throughout the United States, are hereto appended, and made a part hereof, in the order following:

Copy of lease and license agreement for "U. S. M. Co. lasting machine No. 5" is "Exhibit 1."

Copy of lease and license agreement for "Consolidated hand-method lasting machines" is "Exhibit 2."

Copy of lease and license agreement for "Chase lasting machines" is "Exhibit 3."

Copy of lease and license agreement for "Boston lasting machine" is "Exhibit 4."

Copy of lease and license agreement for "welt-sewing machines and outsole-stitching machines" is "Exhibit 5."

Copy of lease and license agreement for "Full Set," "Goodyear department machines," is "Exhibit 6."

Copy of lease and license agreement for "Economy insole reinforcing set" is "Exhibit 7."

Copy of lease and license agreement for "Gem insole machinery" is "Exhibit 8."

Copy of lease and license agreement for "heeling machines" is "Exhibit 9."

Copy of lease and license agreement for "metallic fastening machines" is "Exhibit 10."

1254 Copy of lease and license agreement for "Goodyear department," "auxiliary machines" is "Exhibit 11."

Copy of lease and license agreement for "Rex pulling over system" is "Exhibit 12."

Copies of lease and license agreements for "general department" machines are "Exhibits 13, 14, and 15."

Copy of lease and license agreement for "Ensign lacing machines" is "Exhibit 16."

Copy of lease and license agreement for "Duplex eyeletting machine" is "Exhibit 17."

Copy of lease and license agreement for "Power eyeletting machine" is "Exhibit 18."

Copy of lease and license agreement for "Vulcan foot power eyeletting machines" is "Exhibit 19."

Copy of lease and license agreement for "Xpedite finishing machines" and "Xpedite finishing tools" is "Exhibit 20."

Copy of lease and license agreement for "Ideal clicking machines" is "Exhibit 21."

Copy of lease and license agreement for "Davey pegging machines" is "Exhibit 22."

A chart illustrative of the practical effect of the exclusive use and tying provisions, which are too numerous to be here described in full, of the lease and license agreements above referred to, is hereto appended, made a part hereof, and marked "Exhibit 23."

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VI.

OTHER UNFAIR AND MONOPOLISTIC ACTS OF DEFENDANTS.

Defendants have not hesitated to use, whenever opportunity offered, the advantages possessed by them in consequence of their acquisition of the properties herein described and the resulting concentration in their hands of the almost entire shoe machinery business. They have by misrepresentation and threats sought to and have induced customers of their competitors to abandon them; they have threatened competitors that they would use their enormous financial resources and the power of their combination to secure to themselves the patronage of such competitors, and by threats have prevented others from entering business in competition with them; they have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom; they have offered and granted, and now are offering and granting, rebates to boot and shoe manufacturers who use exclusively one or more of the machines owned or controlled by them; they have bought the business of many competitors, though compelled to pay exorbitant prices therefor; and they have done many other unlawful acts, too numerous to here set forth in detail; and in all these unfair, oppressive acts, defendants continue to engage at the present time.

1256

VII.

ACQUISITION AND CONTROL OF THE BUSINESSES OF INDIVIDUALS, PARTNERSHIPS, AND CORPORATIONS FORMERLY IN COMPETITION WITH DEFENDANTS.

In pursuance of their purpose to monopolize the shoe machinery industry, defendants have, through United Shoe Machinery Company, of New Jersey, by the methods herein described, absorbed

many competitors and driven others out of business, and have deterred and prevented and are now deterring and preventing others from entering the business, and have thus made competition with themselves practically impossible.

Defendants have taken from all or substantially all of those whose business they have absorbed or purchased covenants in writing (which covenants are too numerous and voluminous to be set forth in full in this petition) not to engage for long terms of years in trade and commerce in shoe machinery in competition with defendants; and have further required the vendors to agree in substance that if they shall invent or cause to be invented or shall patent or cause to be patented, either in the United States or in any foreign country, any machines adapted for use in the manufacture of boots or shoes, or shall acquire interests and rights in, to, or under any invention, improvement, or letters patent which they shall make, own, or acquire, during the period of time stipulated in said covenants, relating to machinery, mechanisms, tools and devices, processes,
1257 methods, or things intended or adapted for use in the manufacture of boots and shoes, they shall assign and transfer to said defendants all such inventions and letters patent and interests and rights therein.

Among the individuals, partnerships, and corporations who were competitors of defendants and whose businesses have been so acquired and absorbed by them are the following:

In March, 1899, defendants, through United Shoe Machinery Company, of New Jersey, for the purpose of destroying competition, acquired control of the business of Goddu Sons Metal Fastening Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate and foreign commerce, of machines designed and adapted for use in the manufacture of boots and shoes. The authorized capital stock of this company was $500,000; and defendants, by agreement with Louis Goddu, Louis H. Goddu, George Goddu, William Goddu, Napoleon Goddu, and Eloie Goddu, who held a majority thereof, to wit, 75 per cent, acquired the same for approximately $150,000, by issuing therefor 2,492 shares of the preferred stock, at an agreed value of $30, and 2,130 shares of the common stock, at an agreed value of $35, of United Shoe Machinery Company, of New Jersey, one-half of said stock being held in trust for a period of 10 years by defendant Sidney W. Winslow for the faithful performance of the agreement entered into by the vendors. Having thereby acquired the majority
1258 of stock, and control of the company, defendants have arbitrarily refused to purchase the holdings of some of the largest minority stockholders. The plant has long been closed and the business of the company discontinued.

The vendors, for the same consideration, conveyed to United Shoe Machinery Company, of New Jersey, its successors and assigns, all right, title, and interest in and to any and all inventions which they should thereafter jointly or severally make, own, or acquire within a period of 10 years, and which should in any way relate to shoe machinery or to mechanisms or appliances or devices useful in the manufacture of boots or shoes or to the production or preparation of such machinery, mechanisms, appliances, devices, fastenings, materials, or other things; and the vendors, and each of them, further agreed that they would not thereafter, within 10 years, engage, directly or indirectly, in the business of making or selling any inventions or improvements relating in any way to machinery and mechanisms useful in the manufacture of boots and shoes.

In June, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, agreed with Marshall Henry Pearson and Charles Bennion, of Leicester, England, who owned and controlled all of the capital stock of Pearson & Bennion (Ltd.), a corporation organized under the laws of Great Britain and Ireland, engaged in the business of
1259 manufacturing machines useful in the manufacture of boots and shoes, and in the importation and interstate commerce in the sale, lease, and shipment of the same, with its principal place of business at Leicester, England, and with offices at Boston, Mass., to form a new corporation to be organized under the laws of Great Britain and Ireland for the purpose of taking over and carrying on the shoe-machinery business theretofore carried on by Pearson & Bennion (Ltd.), and the business in England, Ireland, and Scotland of said United Shoe Machinery Company. Accordingly British United Shoe Machinery Company (Ltd.) was formed with a capital of £450,000 ($2,189,925)—£250,000 ($1,216,625) preferred and £200,000 ($973,300) common. For the business conveyed by them to the new company Pearson and Bennion received in stock £40,000 ($194,660) preferred and £40,000 ($194,660) common and £4,300 ($20,925) cash. Pearson and Bennion agreed to assign, transfer, and convey, for the same consideration to the new corporation all letters patent of Great Britain and of other countries and all inventions and all pending applications for letters patent of Great Britain and of other countries, and to assign, transfer, and convey to the new corporation any and all inventions which they should thereafter make in any way relating to shoe machinery or to the manufacture of boots or shoes, or to materials used in their manufacture. The issued capital stock of said British United Shoe
1260 Machinery Company (Ltd.) is £353,494 ($1,720,278), of which United Shoe Machinery Company, of New Jersey,

owns £206,800 ($1,006,392). Defendants Sidney W. Winslow, William Barbour, George W. Brown, John H. Connor, and Elmer P. Howe are on its board of managers and dictate its policies, and its competition with defendants in the markets of the United States was thus destroyed.

In June, 1899, defendants, in pursuance of their general purpose, acquired for $6,769.40, from Silas Pierce and John M. Kingsbury, a majority of the capital stock of Corrugated Wire Fastening Company, Boston, Mass., a corporation of Connecticut, engaged in the manufacture and sale of corrugated wire for use in the manufacture of boots and shoes. This plant has long been closed.

In July, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Breach Manufacturing Company, Boston, Mass., a corporation of Maine, an exclusive license, under certain letters patent of the United States of America, to manufacture, sell, and lease certain machines for rounding or cutting soles or patterns for boots and shoes, for $10,000 cash, plus 10 per cent of the gross proceeds of sales of said machines in the United States and foreign countries.

In August, 1899, Peter A. Coupal and William Gordon, of Boston, Mass., conveyed to United Shoe Machinery Company, of New
1261 Jersey, certain boot and shoe machinery, tools, and appliances, for a consideration of $10,799.25, receiving in payment therefor common stock of said United Shoe Machinery Company. The vendors thereupon entered the employ of United Shoe Machinery Company, of New Jersey, and each of them agreed that so long as he should remain in the employ of said company all inventions that he should make or acquire should be disclosed and explained to it.

In August, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business of Timothy A. Bresnahan, of Boston, Mass., engaged in the manufacture, sale, lease, and shipment in interstate commerce, of machines, tools, and appliances designed and used in the manufacture of shoes, together with the entire capital stock of Boston Shoe Tool Company, a corporation of Maine, with a capital of $50,000, for approximately $72,000, paid in cash and preferred stock of said United Company. Bresnahan agreed to enter the employ of the Boston Shoe Tool Company as manager for a period of two years. Defendants required and took from the vendor covenants that he would not thereafter engage in, nor directly or indirectly aid, assist, or encourage any other person to engage in, the manufacture of heel-trimming, edge-trimming, or edge-cutting machines and tools, cutters, or irons for heel or edge trimming,
1262 for edge setting, or of any of the machines, tools, and products formerly made by said Boston Shoe Tool Company.

Defendants also required and took from said Bresnahan covenants in part as follows:

"Said Bresnahan, as an officer of said Boston Shoe Tool Company, agrees to use his best efforts to purchase, on terms and at prices approved by said United Company, the business of any persons, firms, or corporations engaged in a like or similar business to that now carried on by said Boston Shoe Tool Company, and the pattern, special tools, parts of machines used by them in the manufacture of cutters, trimmers, and edge-trimming and edge-setting and heel-trimming machines or tools, and the stock of such machines, cutters, trimmers, or tools on hand or in process of construction, together with the good will of such businesses and letters patent, trade-marks, and trade names employed by them in carrying on such businesses."

The plant of Boston Shoe Tool Company has long been closed and its business discontinued.

In October, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Edwin Theophilus Freeman, of Boston, Mass., engaged in interstate trade and commerce, all of his business, including machinery and letters patent of the United States, relating to
1263 nailing machines used in the manufacture of boots and shoes, for the sum of $11,000, $500 in cash and $10,500 in preferred stock of said United Company, and, in addition thereto, $500 per year as royalties for a period of eight years. Defendants required and took from the vendor, for the same consideration, covenants that he would not thereafter engage, directly or indirectly, in the manufacture of shoe machinery, and that he would convey to said United Shoe Machinery Company all improvements or inventions which he should thereafter make, relating to boot or shoe or leather-working machinery, tools, and appliances.

In October, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from George W. Freeman, of Boston, Mass., formerly engaged in business with Edwin Theophilus Freeman, whose principal place of business was at Boston, Mass., all of his interests relating to shoe machinery, for a consideration of employment for one year by said United Shoe Machinery Company, of New Jersey, at a compensation of $800 per annum; and, for the same consideration, defendants required and took from said Freeman covenants that he would not thereafter engage, directly or indirectly, in the manufacture of shoe machinery in competition with said United Shoe Machinery Company, or assist or encourage any other person to engage in such competition, and that he would convey to said com-
1264 pany all improvements or inventions relating to boot and

shoe or leather-working machinery which he should thereafter make.

In October, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Albert G. Brewer, of Hopkinton, Mass., all of his inventions and improvements in machines used in the manufacture of boots and shoes and known to the trade as "heel-breasting machines," for $250 in cash, and $5 royalty on each machine thereafter marketed by said United Company. For the same consideration, defendants required and took from said Brewer conveyance of all inventions which he should thereafter make relating to "heel-breasting machines."

In October, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business of James H. Reed, Alfred L. Barrett, Henry M. Loomer, Ward Perkins, and Ralph W. Burnham, copartners, trading under the name of Globe Shoe Tool Company, at Boston, Mass., engaged in the manufacture of edge cutters and irons used in the manufacture of boots and shoes, and in the sale and shipment of the same in interstate trade and commerce. The purchase price was $30,000, which was paid in cash and preferred stock of said United Company. The said Henry M. Loomer and Ward Per-
1265 kins agreed to enter the employ of the vendee at a compensation of $25 per week for a period of one year, and further agreed that they would not thereafter engage, either directly or indirectly, or assist or encourage any other person so to do, in the manufacture of boot and shoe or leather-working machinery in competition with the vendee. For the same consideration, defendants required and took from said Loomer and Perkins covenants that they would convey to vendee all improvements or inventions relating to boot and shoe or leather-working machinery, machines, tools, and appliances which they should thereafter make.

In November, 1899, defendants, through United Shoe Machinery Company, of New Jersey, acquired all of the business of John Ritchie and John Ritchie Company, a corporation, with its principal place of business at Quebec, Dominion of Canada, relating to the manufacture of standard screw machines, slugging machines, tacking machines, and others, designed and used in the manufacture of boots and shoes, paying therefor $15,000. The vendors agreed that they would not engage, directly or indirectly, at any time thereafter in any business in competition with said United Shoe Machinery Company or any of its controlled companies.

In January, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $38,000, the business and assets, including letters
1266 patent of the United States and of other countries, of the

Seaver Process Lasting Company, Boston, Mass., a corporation of Maine, engaged in the manufacture of machines designed and used for the purpose of lasting the uppers of boots and shoes, and in interstate and foreign trade and commerce in the sale and lease of such machines.

In February, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Frank N. Stackpole, George D. Pike, Joseph H. Ordway, and John R. Stuart, jr., copartnership doing business under the name of Boston Blacking Company, at Boston, Mass., substantially a one-half interest in the business of said concern, which was engaged in manufacturing blacking, cement, stains, and other products for dressing or preparing the leather of boots and shoes and other articles, and in selling and shipping the same to various States of the United States and to foreign countries. The purchase price was $280,000, which was paid in preferred stock of said United Shoe Machinery Company. By agreement between the vendors and the vendee, a corporation, Boston Blacking Company, was formed under the laws of Maine, with an issued capital stock of $600,000 (6,000 shares, par value $100 each), which took over the partnership business. The vendors received 3,004 shares of the capital stock of the new corporation, and each of them entered its employ at a
1267 salary of $6,000 per annum. The vendors, and each of them, agreed not to engage or become interested in any way in any competing concern within a period of 15 years in that portion of the United States east of the Mississippi or Missouri Rivers, or any portion of Missouri, Louisiana, Nebraska, Kansas, or California, or any portion of Canada to the eastward of the Albany River, Lake Nipigon, and Lake Superior, or any portion of Europe except in Spain, Portugal, Turkey, Greece, Servia, and Bulgaria. Defendant, United Shoe Machinery Company, of New Jersey, now owns 2,996 shares ($299,600) of the capital stock of said Boston Blacking Company, and by agreement the holders of the majority stock are required to vote that stock in favor of four of the directors who shall be representatives of United Shoe Machinery Company, of New Jersey; defendants Edward P. Hurd, Sidney W. Winslow, and George W. Brown are on its board of directors.

In March, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Erastus E. Winkley and Benjamin Phillips, Lynn, Mass., their inventions and improvements relating to machines known to the trade as "sole-leveling machines," the said United Shoe Machinery Company to pay to the vendors a royalty of $20 for each machine made and sold, leased, or otherwise disposed of. The vendors, for

the same consideration, agreed to convey to defendants all in-
1268 ventions or improvements in sole-leveling machines which they should thereafter make or acquire.

In March, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the foreign trade and business of Stanley Manufacturing Company, a corporation of Maine, with its principal place of business at Lawrence, Mass., engaged in the manufacture of machines known to the trade as "McKay sewing machines," used in the manufacture of boots and shoes, and in interstate and foreign trade and commerce in the shipment, sale, and lease of the same, paying therefor $86,500 in preferred stock of said United Shoe Machinery Company. The vendors agreed to withdraw from Germany and not thereafter to engage in that country in the shoe-machinery business, and that they would not thereafter export or sell or dispose of to others for export any boot or shoe machinery, or supplies therefor, outside of the United States, except through said United Shoe Machinery Company.

In April, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business of Lincoln Sewing Machine Company, Boston, Mass., a corporation of New Hampshire, engaged in the manufacture, sale, lease, and shipment in interstate commerce of sewing machines de-
signed and used for the manufacture of boots and shoes. The
1269 consideration was $33,075, of which $2,450 was paid in cash and $30,625 in common stock of said United Shoe Machinery Company.

In June, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, by agreement with Theophilus King, Henry Tolman, and Eleazer Kempshall, owners of the majority stock of Boston Fast Color Eyelet Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce of eyelets covered with celluloid, formed a new company, United Fast Color Eyelet Company, under the laws of Maine, with a capital of $1,500,000; and the entire business and assets of Boston Fast Color Eyelet Company were transferred to this company, and the said King, Tolman, and Kempshall received $155,000 of preferred stock of the new company, and said United Shoe Machinery Company $1,000,000 of common and $145,000 of preferred stock of the new company; and the vendee also agreed to pay the said King $35,000 in cash. The vendors and each of them agreed for the same consideration that all inventions and letters patent of the United States and of foreign countries which they should acquire within 15 years thereafter relating to covered eyelets, or to any machinery, plant, processes, or products

used or intended to be used in the manufacture thereof, should be assigned and conveyed to the new corporation, and that neither
1270 of them would jointly or severally enter the employ or become interested in the business of any person, firm, partnership, or corporation the business of which would be hostile to the development and prosperity of the business of the new company. $1,478,600 of the capital stock of the new company has been issued, of which said United Shoe Machinery Company owns $1,020,600. Defendant Sidney W. Winslow always has been its president, and its business and affairs are conducted without competition with any of the defendants. The company is engaged in interstate and foreign trade and commerce.

In June, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Theophilus King, Henry Tolman, and Eleazer Kempshall 60,000 shares, being a majority thereof, of the capital stock of Enamel Eyelet Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce of eyelets for boots and shoes, for $75,000 in preferred stock of United Fast Color Eyelet Company. Defendants also required and took from the vendors an assignment of all inventions, letters patent, and applications for letters patent of the United States and of foreign countries in any way relating to enamel eyelets or the manufacture thereof which they then owned or controlled or
1271 which they should make or acquire or control or obtain any interest in within 15 years from the date of said agreement. The vendors and each of them also agreed that they would not, for a period of 15 years, engage in any business in competition with defendants.

In September, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Simon Ross and W. F. Harmon all of the issued capital stock and business of Ross-Moyer Manufacturing Company, Cincinnati, Ohio, a corporation of Ohio, with an issued capital of $197,400, engaged in the manufacture, sale, and shipment in interstate commerce of edge setters, edge trimmers, heel scourers, and other machines used in the manufacture of boots and shoes, paying therefor one and eight-tenths shares of preferred stock of United Shoe Machinery Company, of New Jersey, for each share of the capital stock of Ross-Moyer Manufacturing Company, aggregating $88,830. The business has been continued, but under the direction and control of and without competition with defendants. Defendant Sidney W. Winslow has been its president since the company was acquired. All of the issued capital stock is owned by said United Shoe Machinery Company.

About January, 1901, defendants, in pursuance of their general purpose, acquired for United Shoe Machinery Company de
1272 France and for Deutsche Vereinigte Schuhmaschinen Gesellschaft G. m. b. H., the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company, Boston, Mass., paying therefor approximately $25,000 in preferred stock of United Shoe Machinery Company, of New Jersey.

In February, 1901, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business and assets, including letters patent, of Swain Fuller Manufacturing Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, lease, and shipment in interstate commerce of machines used in the manufacture of boots and shoes, paying therefor $13,201.92, of which $2,576.92 was paid in cash and the balance, $10,625, in preferred stock of said United Shoe Machinery Company. The plant has long been closed.

In February, 1901, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired control of $599,210 of the issued capital stock, $1,000,000, of Globe Sewing Machine Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, lease, and shipment in interstate commerce of sewing machines designed and used for the manufacture of boots and shoes, paying therefor $20,000 in preferred stock of said United Shoe Machinery Company. The plant has long been closed.

1273 About May, 1901, defendants, in pursuance of their general purpose, acquired for approximately $45,000 the property and business (not theretofore acquired) of Boot & Shoe Sole Laying Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate and foreign commerce of machines designed and used for laying the soles of boots and shoes. The business of the company, as a going concern, has been discontinued.

In June, 1901, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired all the business, assets, property, real estate, machinery, and devices, including all letters patent of the United States and of foreign countries, of John C. Rhodes and John B. Rhodes, trading under the name of J. C. Rhodes & Company, New Bedford, Mass., engaged in the manufacture, sale, and shipment, in interstate and foreign commerce of eyelets used in the manufacture of boots and shoes, paying therefor $775,000, $200,000 in cash and $575,000 in preferred stock of said United Shoe Machinery Company. The vendors agreed that they would not, for a period of 15 years, engage in, except as employees of defendants, either as proprietor, manager, manufac-

turer, partner, employee, or stockholder of any corporation, or be connected with, directly or indirectly, the business of manufacturing or selling eyelets of any description, or any substitute therefor, or any machinery for making eyelets. Defendants required
1274 and took from the vendors covenants to convey to the vendee all inventions and improvements relating to the manufacture of eyelets which they should make, own, or acquire within 15 years. Defendants then caused to be organized J. C. Rhodes & Company (Inc.), under the laws of Maine, with a capital of $600,000, which took over the partnership business and which has since been conducted without competition with any of defendants. All of the capital stock is owned or controlled by said United Shoe Machinery Company. Defendant Sidney W. Winslow is its president.

In December, 1901, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $31,000 the eyelet business of Morley Button Manufacturing Company, Portsmouth, N. H., a Maine corporation, engaged in the manufacture, sale, and shipment in interstate commerce of eyelets used in the manufacture of shoes. For the same consideration, defendants required and took from the vendors covenants not to engage thereafter, directly or indirectly, during the terms of the patents conveyed, in the manufacture or sale of eyelets in competition with them, nor to encourage, aid, or assist others to engage in such competition, either in the United States or in any foreign country.

In February, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jer-
1275 sey, acquired from Oliver A. Miller, Brockton, Mass., engaged in the manufacture of "treeing machines," and in interstate and foreign trade and commerce in the sale and shipment of the same, all of his business and assets, including letters patent of the United States and of foreign countries, for $160,000 in cash. Defendants required and took from the vendor covenants that he would not, at any time within 15 years, engage, directly or indirectly, in the business of manufacturing or dealing in boot or shoe treeing machines, or tree legs, tree feet, or any parts thereof, in competition with defendants. Thereupon defendants caused to be organized, under the laws of Maine, O. A. Miller Treeing Machine Company, with an authorized capital of $500,000, of which $200,000 has been issued, which took over the business formerly conducted by O. A. Miller. United Shoe Machinery Company, of New Jersey, owns and controls all of the issued capital stock except $20,000. It is engaged in interstate and foreign trade and commerce, but is not competing with any of defendants. Defendant Sidney W. Winslow is its president.

In June, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business and assets of Marlboro Awl & Needle Company, Marlboro, Mass., engaged in the manufacture, sale, and shipment in interstate and foreign commerce, of awls and needles used in the
1276 manufacture of boots and shoes, the vendors agreeing to take stock, in payment therefor, in a new corporation to be formed by defendants. Defendants thereupon caused United Awl & Needle Company, with an authorized capital of $200,000, to be organized under the laws of Maine, which took over the business of the old concern. $56,100 of the capital stock has been issued, of which said United Shoe Machinery Company owns $34,900. It operates a factory at West Medway, Mass., and is engaged in interstate and foreign trade and commerce, but is not competing with any of the defendants in the sale and shipment of its products. Defendant Sidney W. Winslow is its president.

In September, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $5,200 from Arthur Fuller all the property and assets, including letters patent of the United States and of other countries, of American Sole-Laying Machine Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, lease, and shipment in interstate commerce of machines designed and used for laying or leveling the soles of boots and shoes. Defendants required and took from the vendor covenants that he would not become interested, directly or indirectly, for a period of 10 years in the business of manufacturing machines adapted for use in the operation of laying or leveling the soles of boots and shoes. The plant has long been closed.

1277 In October, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $14,000 the foreign business (except Canada) of William J. Young, Lynn, Mass., engaged in the manufacture, sale, lease, and shipment in interstate commerce of machines designed and used for preparing the heels for boots and shoes. Defendants required and took from the vendor covenants that he would not engage, directly or indirectly, in competition with said United Company for a period of 15 years in any country other than the United States and the Dominion of Canada; that he would convey, for the same consideration, to said United Company all inventions and improvements that he should make or acquire within a period of 15 years relating or pertaining in any way to machinery or devices intended or adapted for use in the manufacture or preparation of heels.

In November, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from George A. Smith, of Philadelphia, Pa., all of the capital stock, property, assets, and business of the George A. Smith Machinery Company, Philadelphia, Pa., a corporation of New Jersey, engaged in the manufacture, sale, lease, and shipment in interstate commerce of machinery, appliances, and supplies used by manufacturers of boots and shoes. The purchase price was to be
1278 determined upon an inventory of the property of the Smith Company. Defendants required and took from the vendor covenants that he would not at any time within 10 years, within the United States or in any other country, directly or indirectly, enter into or be engaged in, or financially or otherwise assist any other person, firm or corporation in entering into or developing or carrying on any business relating to the manufacture, sale, or lease of any machinery, devices, or appliances intended or adapted for use in the manufacture of boots and shoes, or compete or interfere with any business carried on by said United Company or by any company in which it is the owner of the majority of the capital stock.

In December, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $41,500 the business of George A. Emerson and William R. Sampson, copartners, trading under the name of George W. Emerson & Company, at Lynn, Mass., engaged in the manufacture, sale, and shipment in interstate commerce, of machinery, appliances, devices, and supplies designed and used in the manufacture of boots and shoes. For the same consideration, defendants required and took from the vendors, and each of them, covenants that they would not engage, directly or indirectly, in competition with the vendee for a period of 15 years, and that all inventions or improvements which said vendors, or either of them, should make, own or
1279 acquire relating to machinery, appliances, devices, or supplies adapted for use in the manufacture of boots and shoes, at any time within said period of time, should be forthwith disclosed to said United Company, its officers and patent solicitors. The business has been discontinued.

In March, 1903, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired control of the business of the T. A. Norris Machine Company, Brockton, Mass., a corporation of Massachusetts, with an issued capital stock of $20,000, engaged in the manufacture, sale, and shipment in interstate commerce, of machines used in the manufacture of boots and shoes. The plant has been closed.

In February, 1903, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey,

acquired from William B. Cross, for $50,000, the majority of the capital stock of W. W. Cross & Company (Inc.), Brockton, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce, of nails, tacks, and other supplies used in the manufacture of boots and shoes.

In May, 1903, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for approximately $100,000, the property and assets of
1280 the John K. Krieg estate, Hermine L. Krieg, Lewis G. Metzger, Charles O. Kuhnert, Lemuel R. Mears, and Carl H. Krieg, copartners doing business under the firm name of J. K. Krieg & Company, New York, N. Y., engaged in the manufacture, sale, and shipment in interstate commerce, of machines designed and used in the manufacture of boots and shoes; and also in the manufacture of goods, supplies, and equipment for retail shoe stores and for cobblers. Defendants required and took from the vendors covenants that they would not engage, directly or indirectly, for a period of 15 years, except as employees of said United Shoe Machinery Company, or some one of its controlled corporations, in any business relating or pertaining in any way to the manufacture of or dealing in shoe machinery or shoe manufacturers' goods, findings, supplies, or equipment, or in any business which would in any way interfere with or compete with defendants, except in selling supplies to retail shoe stores and cobblers, all such supplies to be purchased from defendants.

In October, 1903, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Joseph P. Curtis, Everett, Mass., all of his business, including letters patent and applications for letters patent, relating to cementing machines used in the manufacture of boots and shoes;
consideration, $5,000, to be paid in royalties on machines there-
1281 after manufactured by said United Company. Defendants required and took from the vendor, for the same consideration, conveyances of all inventions and improvements which he should at any time thereafter make relating to cementing machines, either as sole inventor or as joint inventor with others, and all right, title, and interest in, to, and under all inventions and improvements in cementing machines which he may in any way own or control or which he may have any right, by agreement or otherwise, to acquire or take over, and all letters patent and interests therein.

In January, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, employed one Fred H. Perry, of West Medford, Mass., as inventor for a period of one year at $30 per week. For the same consideration, defendants required and took from said Perry covenants that

he would convey to said United Shoe Machinery Company all inventions and improvements which he should make, own, or acquire, relating to machinery useful in the manufacture of boots and shoes, at any time within five years after the termination of his employment by said United Company.

In January, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $3,052 from Joseph W. Leary, of Lynn, Mass., his
1282 interstate business of manufacturing and dealing in shoe machinery, devices, and supplies, cements, blackings, and stains. The vendor agreed to enter the employ of said United Company for a period of five years with compensation at $40 per week, and for the same consideration agreed to convey to the vendee and its successors all inventions and improvements which the vendor should make or acquire within 10 years from the date of the termination of such employment by said United Company, and that within the same period he would not engage, directly or indirectly, in any business which competed or interfered with said United Shoe Machinery Company or any of its affiliated companies.

In January, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $25,915 the business, together with all letters patent of the United States and of foreign countries, of F. G. Farnham Brush Manufacturing Company, Honesdale, Pa., a corporation of New Jersey, engaged in the manufacture and in interstate and foreign trade and commerce in the sale of brushes, sleeves, collars, hubs, fillers, bristles, fiber, and other parts used for finishing boots and shoes. The vendors agreed that they would not engage, directly or indirectly, or in any way assist in any competition, in any country, or financially assist any other person or corporation to compete with said United Shoe Machinery Company or its successors for a
1283 period of 15 years, and for the same consideration defendants required and took from the vendors covenants that they would convey to defendants all inventions and improvements and all letters patent and applications therefor of the United States and of foreign countries which they should make or acquire at any time within said period of time relating or pertaining in any way to brushes, fillers, hubs, sleeves, collars, bristles, and fiber used in the manufacture or finishing of boots and shoes.

In May, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from American Glue Company, Boston, Mass., a corporation of New Jersey, the exclusive agency for the United States and Canada for the sale of all sandpaper made for or by said American Glue Com-

pany for use in the manufacture of boots and shoes. Defendants in February, 1901, had acquired a similar agency for Europe.

In June, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, and United Shoe Machinery Company, of Maine, acquired the business of Zachary Taylor French, of Boston, Mass., engaged in the development of machines designed and used for the manufacture of boots and shoes, paying therefor $15,000 in annual installments of $1,500 each. Defendants required and took from the vendor cov-
1284 enants that he would assign to said United Shoe Machinery Company, for the same consideration, all inventions and improvements which he should, directly or indirectly, make or acquire within 10 years relating to machinery useful in the manufacture of boots and shoes, and that he would not engage in competition with defendants, for the same period, in the United States or any foreign country.

In June, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $4,750 cash, the business of Herbert L. Kimball and Irving A. Hadley, copartners, doing business under the firm name of Kimball & Hadley, at Lynn, Mass., engaged in the manufacture, sale, and shipment in interstate commerce, of needles, awls, drivers, supplies, etc., used in the manufacture of boots and shoes. Defendants, for the same consideration, required and took from the vendors covenants that neither of them would, directly or indirectly, within a period of 15 years, enter into or become interested in, or financially or otherwise assist any person, firm, or corporation in entering into, developing, or carrying on any business which should consist in whole or in part of or relate to manufacturing or dealing in needles, awls, or drivers. The business has been discontinued.

In June, 1904, defendants in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey,
1285 acquired the business and assets of William B. Arnold and of Arnold Machine & Supply Company, North Abington, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce, of cementing machines and devices used in the manufacture of boots and shoes, for $500 cash and royalties on each machine thereafter manufactured by said United Company during the life of the patents transferred. For the same consideration defendants required and took from the said Arnold covenants that he would not, at any time within 15 years, directly or indirectly, enter into or be engaged in, or financially or otherwise assist any person, firm, or corporation in entering into, developing, or carrying on any business consisting in whole or in part of or relating to the manufacture or dealing in cementing machines or devices, or de-

veloping or exploiting any invention relating to such machinery or devices; and, for the same consideration defendants required and took from said Arnold covenants to convey to said United Shoe Machinery Company and its successors all inventions and improvements which he should make, acquire, or take over thereafter, within 15 years, relating to any such machinery or devices.

In October, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Irving E. Booth and Quentin W. Booth, copartners,
doing business under the firm name of Booth Brothers, at
1286 Rochester, N. Y., an assignment of their business in the United
States and Canada relating to perforating machines, for $2,400 in cash and a royalty of $15 to be paid for each machine sold by defendants in the United States and $10 for each machine sold by them in Canada, the said royalties to continue until they should aggregate $7,600, whereupon all interest of the vendors in the said inventions should cease. The vendors agreed that neither of them would engage in the manufacture or sale of any perforating machines or become interested in any manner whatsoever in any such machines during the terms of the patents assigned to defendants.

In October, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Leopold J. Courteau, of Brockton, Mass., an assignment of all his inventions and devices, including all letters patent relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining. The consideration therefor was 10 per cent of the net selling price of each machine or the payment of $1,000 in cash. For the same consideration, defendants required and took from the vendor covenants that he would convey to defendants all inventions, improvements, or letters patent of the United States and of any and all foreign countries, and any and all right, title, or interest in such inventions,
1287 improvements, and letters patent which he should at any
time thereafter within 15 years own or possess, or in which he should have any interest whatsoever relating to mechanisms or devices for handling or holding the linings of shoes.

In November, 1905, defendants, in pursuance of their general purpose, acquired for $21,724 the business of Oscar A. Campbell and Samuel H. Nichols, copartners trading under the name of Brockton Supply Company, at Brockton, Mass., engaged in the manufacture, sale, and shipment in interstate commerce, of machines for pulling lasting tacks.

In January, 1906, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired control of the Business of The Smith Lacing Machine

Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce of machines designed and used for lacing the uppers of boots and shoes prior to lasting, paying therefor $117,500, of which $50,000 was paid in cash and the balance was to be paid in royalties on machines thereafter manufactured and sold by defendants in the United States and in foreign countries. The vendors agreed to transact no further business and to liquidate the affairs of the corporation.

In January, 1906, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired control of the business of Metallic Heel & Counter
1288 Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate and foreign commerce, of metallic heels and counters. The purchase price was $119,820, of which $52,320 was paid in cash and the balance was to be paid in royalties on machines thereafter manufactured and sold in this and in foreign countries. The vendors agreed to transact no further business and to liquidate the affairs of the corporation.

In September, 1906, defendants, in pursuance of their general purpose, through United-Xpedite Finishing Company, a corporation of Maine, acquired, for $12,500 cash, from Zotique Beaudry, Lynn, Mass., his inventions and improvements relating to machines and parts thereof for burnishing and finishing the heels of boots and shoes. For the same consideration, defendants required and took from the vendor covenants that all inventions, improvements, and letters patent and interests or rights therein, relating to heel-burnishing machinery, methods, and devices which he should thereafter make, own, or acquire or obtain any interest in should be disclosed to defendants, and that the vendor would not within a period of 15 years engage, directly or indirectly, in making, developing, or exploiting any improvements in heel-burnishing machinery, methods, or devices, or entering into, developing or carrying on any business which should consist in whole or in part of manufacturing, or in any way
1289 dealing in machinery or mechanisms for finishing or burnishing the heels of boots and shoes.

In November, 1907, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $71,284, the entire business of Irving E. Booth and Quentin W. Booth, operating under the trade name of "Booth Brothers," Rochester, N. Y., engaged in the manufacture, sale, and shipment in interstate and foreign commerce, of machinery, tools, mechanisms, devices, findings, materials, and supplies used in the manufacture of boots and shoes. Defendants required and took from the vendors covenants that neither of them would directly or in-

directly engage or become interested in the manufacture or sale of machinery relating to the manufacture of boots or shoes, within 15 years, and that they would not, directly or indirectly, financially or otherwise, encourage or assist, or in any way influence or advise any other person, firm, or corporation to engage in any such business in competition with defendants. By agreement, a corporation, Booth Brothers Company, was formed under the laws of New York, with an authorized capital of $25,000 (all of which is owned by United Shoe Machinery Company, of New Jersey), which took over the business of the old concern. Defendants control the election of its officers and directors, and its business is carried on without competition with any of them. Defendant Sidney W. Winslow is its
1290 president. It operates a manufacturing plant at Rochester, N. Y., and is engaged in interstate and foreign trade and commerce in shoe machinery.

In December, 1908, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $80,000, from William B. Rice, Harry L. Rice, and John H. Richardson all the property and business of Richardson Shoe Machinery Company, Lynn, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce, of machines known to the trade as "McKay sewing machines," and machines designed and used for cutting or dieing out leather and other materials used in the manufacture of boots and shoes, including machines known to the trade as "clicking machines." The vendors and each of them agreed that they would not, for a period of 10 years, either directly or indirectly, enter into or become interested in, or financially or otherwise assist any other person, firm or corporation in entering into, engaging in, developing, or carrying on the manufacturing of or dealing in any machinery which shall, directly or indirectly, interfere or compete with the business carried on by defendants; and they further agreed that they would convey, for the same consideration, to said United Shoe Machinery Company all inventions, improvements, letters patent, and interests and rights therein which they should make,
1291 acquire, own, or have any right to acquire or take over relating to any such machinery within said period of time. The plant has been closed.

In December, 1908, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, entered into an agreement with John H. Richardson, referred to above in connection with the acquisition of the business of Richardson Shoe Machinery Company, for his employment by said United Shoe Machinery Company, for a period of one year, at an annual

salary of $2,500. For the same consideration, defendants required and took from said Richardson covenants that he would not, within a period of 10 years after the expiration of such employment, engage, directly or indirectly, in competition with defendants in the business of dealing in any machinery, mechanisms, tools, or devices designed or adapted for use in the manufacture of boots or shoes or in the manipulation or working of leather; and that he would convey to defendants all inventions and improvements which he should make or acquire, relating in any way to machinery used in the manufacture of boots and shoes, and all letters patent, both of the United States and of any and all other countries, covering the same, within 10 years after the termination of his employment by said United Shoe Machinery Company.

In April, 1908, defendants, in pursuance of their general
1292 purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $16,883 cash, from Edward Hobart, control of the shoe-machinery business of Carver Cotton Gin Company, East Bridgewater, Mass., a corporation of Massachusetts, engaged in the manufacture and in interstate and foreign trade and commerce in the sale and shipment, of machines, mechanisms, tools, and devices used in the manufacture of boots and shoes. For the same consideration, defendants required and took from the vendors covenants that neither of them would at any time within 15 years, directly or indirectly, engage in or financially or otherwise assist any other person, firm, or corporation in entering into, developing, or carrying on any business relating in whole or in part to manufacturing, selling, or otherwise dealing in any machinery, tools, mechanisms, or devices used in the manufacture of boots and shoes, or in any other business which would in any way interfere or compete with defendants.

In January, 1909, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $11,500 cash, from Harry L. Rice and Fred La Chappelle, Lynn, Mass., their inventions and improvements relating to machinery, mechanisms, and devices for forming chain stitches and chain-stitch seams, and machines, mechanisms, and devices
1293 used for attaching the welts of boots and shoes. Defendants required and took from the vendors covenants that they would convey for the same consideration to said United Shoe Machinery Company all inventions, improvements, letters patent, and interests and rights therein which they, or either of them, should at any time within 10 years make, acquire, own, or have any right, by agreement or otherwise, to acquire or take over, relating to any methods, machinery, mechanisms, tools, or devices intended for use in the manu-

facture of boots and shoes, and that neither of them would, directly or indirectly, engage in any business which would interfere or compete with the business of defendants.

In February, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $125,000 cash, from W. Eugene Ellis and Everett D. Chadwick all of the capital stock and business of Ellis Lacer Company, Haverhill, Mass., a corporation of Maine, engaged in the manufacture and in interstate trade and commerce in the sale and shipment of machinery and mechanisms designed and used for temporarily securing the tops of lace shoes while the same are being lasted, the said device being known to the trade as the "Ellis Lacer." Defendants required and took from the vendors covenants that they would not, directly or indirectly, engage in any business in competition with defendants, and that they would convey to defend-
1294 ants, without additional consideration, all inventions and letters patent of the United States and of all other countries which they or either of them might make or acquire at any time within five years.

In February, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $60,000 cash, from Alexander H. Lewis, Alfred J. Becht, Morris McGrew, Samuel J. Wentworth, Pearl J. Wentworth, Jesse S. Wentworth, and Bayard L. Kilgour all of the capital stock and business of The Wentworth Company, Cincinnati, Ohio, a corporation of Ohio, engaged in the manufacture and in interstate and foreign trade and commerce in the sale and shipment of machines used in the manufacture of boots and shoes. Defendants required and took from the vendors covenants, in substance, that neither of them would, directly or indirectly, at any time within 10 years, engage in the business of manufacturing, developing, or exploiting any machinery or devices that would in any way compete or interfere with the business of said United Shoe Machinery Company.

In February, 1910, defendants, in pursuance of their general purpose, acquired, for $52,185, from B. F. Sturtevant Company, Boston, Mass., a corporation of Massachusetts, its business of manufacturing and dealing in peg wood and wood shanks used in the manufacture of boots and shoes.

1295 In September, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business of Thomas G. Plant, who was engaged in the manufacture of machines designed and adapted for use in performing all the principal operations in the manufacture of boots and shoes which can be performed by the aid and use of machinery.

For at least two years immediately preceding September, 1910, said Plant had invented, and had taken out letters patent of the United States and of foreign countries covering the same, machines designed and adapted for performing all the principal operations in the manufacture of boots and shoes. Among such machines, which are too numerous to be referred to specifically in this petition, were lasting machines, welt-sewing machines, and outsole-stitching machines, heeling machines, metallic-fastening machines, and many others. On or about May 1, 1910, the said Plant installed in the shoe factory of Thomas G. Plant Company, a corporation of New Jersey, issued capital $3,750,000, with its factory and principal offices at Boston, Mass., with a daily capacity of 17,000 pairs of shoes, a complete set of the machines so owned and controlled by him, the said Plant being the owner or in control of a majority of the capital stock of the Plant Company. For several years prior to the installation and use in the factory of the Plant Company of the machines
owned and controlled by Thomas G. Plant, defendants,
1296 through United Shoe Machinery Company, of New Jersey,
or some one or more of the corporations owned and controlled by them, had furnished and supplied all of the principal machines used in the factory of the Plant Company in the manufacture of boots and shoes. Upon the installation in said factory of the machines owned and controlled by Plant, the officials of that company caused the machines owned and controlled by defendants to be dismantled and removed and discontinued the payment of royalties on the same.

Thereupon defendants instituted proceedings against Thomas G. Plant Company in the Supreme Judicial Court of Massachusetts, in which United Shoe Machinery Company, of New Jersey, was the party plaintiff, to enjoin the Plant Company from using the machines which had been supplied to it by Thomas G. Plant; to enjoin said Plant from supplying or furnishing to the Plant Company other machines to be used in the place of machines owned and controlled by defendants, and to recover rents and royalties on defendants' machines during the period that Plant's machines had been used in the factory of the Plant Company. This proceeding was never prosecuted to a final determination for the reasons hereinafter stated.

Thomas G. Plant had advertised extensively, through the public press and otherwise, for several months prior to September, 1910, the
machines which he had invented for use in the manufacture of
1297 boots and shoes, and had solicited among shoe manufacturers,
in various parts of the United States orders for the sale and lease of such machines. Plant, however, experienced difficulty in obtaining orders for his machines on account of the arbitrary, op-

pressive, unreasonable, and unlawful lease and license agreements, containing exclusive use and tying provisions, hereinbefore mentioned and described, which defendants had theretofore required boot and shoe manufacturers to sign, in order to obtain machines from defendants, and under which such manufacturers then held all of the essential machines necessary in the manufacture of boots and shoes. However, a concerted effort was made by a number of prominent boot and shoe manufacturers engaged in business in various States of the United States to acquire the inventions and machines owned and controlled by Plant, or an interest therein. Among such boot and shoe manufacturers who were so interested were Roberts, Johnson & Rand Shoe Company, St. Louis, Mo.; Hamilton-Brown Shoe Company, St. Louis, Mo.; Peters Shoe Company, St. Louis, Mo.; Brown Shoe Company, St. Louis, Mo.; Florsheim Shoe Company, Chicago, Ill.; Selz, Schwab & Company, Chicago, Ill., and Commonwealth Shoe & Leather Company, Boston, Mass.

Representatives of the above companies on September 22, 1910, were in Boston, Mass., in conference with Thomas G. Plant with a view to either purchasing an interest in his inventions and
1298 machines or to make some arrangement which would enable them to obtain machines for use in their factories, and thereby be relieved from the domination and control of defendants. Defendants, being advised of the purpose and intent of said boot and shoe manufacturers, and well knowing that if any arrangement were made between them and Thomas G. Plant whereby they could obtain for use in their factories machines not owned and controlled by defendants, such action would result in defendants' machines being dismantled and removed, as had been done in the factory of the Plant Company, and that competition would be created in the sale, lease, and use of such machines, defendants, for the purpose of preventing such competition and to monopolize trade and commerce in shoe machinery, on or about September 23, 1910, entered into agreements with said Plant whereby they acquired all the inventions, letters patent of the United States and of all foreign countries, relating thereto, together with all machinery, mechanisms, tools, and devices owned and controlled by said Plant, designed and adapted for use in the manufacture of boots and shoes; and defendants acquired also the holdings of the capital stock, which constituted a majority thereof, which the said Plant owned and controlled in said Thomas G. Plant Company. The issued capital stock of said Thomas G. Plant Company is $3,750,000, of which defendants acquired $2,250,000. For the inventions, improvements, letters patent of the United
1299 States and foreign countries, machines, machinery, mechanisms, and devices designed and used in the manufacture of boots an dshoes, including the $2,250,000 of capital stock of said

Thomas G. Plant Company, defendants paid Thomas G. Plant $6,000,000, part in cash and part in stock of defendant corporations.

For the purpose of maintaining their monopoly, defendants required and took from said Plant covenants, in substance, that he should assign, transfer, set over, and deliver to defendants all inventions, improvements, letters patent of the United States and of foreign countries, applications for letters patent, and interest and rights therein, which he might make, own, or acquire, within 15 years thereafter, relating to the manufacture of boots and shoes, or to machinery, mechanisms, tools, or devices, processes, methods, or things intended or adapted for use in the manufacture of footwear, or in the working or manipulation of leather, or relating to eyelets or footwear findings of any description whatsoever, or to the manufacture thereof, together with any and all rights which the said Plant might, within said period, by agreement or otherwise, acquire or take over, covering any such inventions, improvements, letters patent of the United States and of other countries, applications for letters patent, and interest and rights therein.

In November, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey,
acquired from Adam H. Prenzel, of Halifax, Pa., all of his
1300 inventions and letters patent of the United States and of
all other countries relating to certain machines used in the manufacture of turned shoes, for $8,000 cash, and 25 per cent of all royalties on machines manufactured by defendants under the letters patent acquired from the vendor, until they shall have aggregated $75,000, although there was no obligation on the part of the vendee to manufacture any machines. Defendants required and took from the vendor, for the same consideration, covenants that he would convey to them all inventions, improvements, and letters patent of the United States and of any and all other countries which he should acquire or take over thereafter, relating to the class of machines covered by the agreement.

In December, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $25,000 in cash, the business of Maurice V. Bresnahan, William H. Bresnahan, and John J. Donlan, doing business under the firm name of M. V. Bresnahan & Company, at Lynn, Mass., engaged in the manufacture and in interstate trade and commerce in the sale and shipment of machines, tools, mechanisms, and devices designed and used in the manufacture of boots and shoes. The vendors agreed to enter the employ of the vendee. Defendants required and took from the vendors covenants that neither of them
should engage in, directly or indirectly, within 10 years after
1301 the termination of their employment, or financially or other-

wise assist any person, firm, or corporation to enter into, develop or carry on any business in any way relating to or pertaining to manufacturing, selling, or otherwise dealing in any machinery, mechanisms, tools, or devices adapted for use in the manufacture of boots and shoes, or in any business which would in any way interfere or compete with the business of said United Company; and they and each of them further agreed to convey to said United Company, for the same consideration, all inventions, improvements, letters patent, and applications therefor which they should make or acquire, or have an interest in, at any time within 10 years after the termination of said employment agreement relating to shoe machinery. The plant has been closed.

In April, 1911, defendants, in pursuance of their general purpose, through United Shoes Machinery Company, of New Jersey, acquired, for approximately $122,735 cash, the business of Charles P. Stanbon, doing business under the name of Charles P. Stanbon & Company, Lynn, Mass., long engaged in interstate trade and commerce in the manufacture, sale, and lease of machines, tools, mechanisms, and devices designed and used in the manufacture of boots and shoes. The vendor agreed to enter the employ of said United Shoe Machinery Company.

Since the organization of United Shoe Machinery Com-
1302 pany, of New Jersey, as aforesaid, and the acquisition through it of the properties of the various individuals and corporations as aforesaid defendants' entire business has been and now is conducted under one control, and in perfect harmony, and the competition which previously existed between said several concerns has been entirely destroyed.

VIII.

DOMINATION BY DEFENDANTS OF FOREIGN TRADE AND COMMERCE IN SHOE MACHINERY.

In addition to the foregoing, defendants, through United Shoe Machinery Company, of New Jersey, by the purchase of all or a controlling interest in the business of a number of individuals and corporations engaged in the shoe machinery business in foreign countries, by the organization of other corporations and the ownership of their capital stock, and by contracts, agreements, and combinations with such corporations, have restrained and monopolized, and now restrain and monopolize, trade and commerce in shoe machinery between this and foreign countries; the principal countries whose commerce with the United States is thus restrained and monopolized being as follows: Great Britain and Ireland, through a combination with the British United Shoe Machinery Company (Ltd.), a corporation or-

ganized under the laws of Great Britain; Norway, Sweden, and Denmark, through a combination with Aktieselskabet United Shoe
1303 Machinery Company of Copenhagen, a corporation organized under the laws of Denmark; the Dominion of Canada, through a combination with United Shoe Machinery Company of Canada, a corporation organized under the laws of the State of New Jersey; Germany, Austria, and Russia, through a combination with Deutsche Vereinigte Schuhmaschinen Gesellschaft G. m. b. H., a corporation organized under the laws of Germany; France, through a combination with United Shoe Machinery Company de France, a corporation organized under the laws of the Republic of France; Switzerland, through a combination with Schweiz. Vereinigte Schuhmaschinen A.-G., a corporation organized under the laws of Switzerland; Spain and Portugal, through a combination with the United Shoe Machinery Company, of Connecticut, a corporation organized under the laws of the State of Connecticut; the various States of South America, through a combination with the United Shoe Machinery Company of South America, a corporation organized under the laws of the State of Maine; and Mexico, through the United Shoe Machinery Company of Mexico, a corporation organized under the laws of the State of Maine.

Defendants maintain and operate factories at divers places in the United States and in foreign countries, and, among others, at Beverly, Brockton, West Medway, and New Bedford, Mass.; New York and Rochester, N. Y.; Cincinnati, Ohio; Manchester, N. H.; Seymour and Ansonia, Conn.; Montreal, Canada; Leicester,
1304 England; and Ivry sur Seine, France. The manufactured output of all the defendants is advertised, sold, leased, and transported to their agents, purchasers, and lessees throughout the various States of the United States and abroad as a part of interstate and foreign commerce.

IX.

ORGANIZATION OF UNITED SHOE MACHINERY CORPORATION, ITS PURPOSES, AND OPERATIONS.

For some time prior to April, 1905, defendants had under consideration the question of distributing among the holders of common stock of United Shoe Machinery Company, of New Jersey, a portion of the accumulated profits of that company, in addition to the regular dividends theretofore paid. To provide means therefor, and to secure better facilities for destroying competition and restraining and monopolizing interstate and foreign trade and commerce in shoe machinery, the directors, officers, and stockholders of

United Shoe Machinery Company, of New Jersey, caused to be organized, in May, 1905, under the laws of New Jersey, United Shoe Machinery Corporation with an authorized capital of $50,000,000 ($15,000,000 preferred, $35,000,000 common).

The objects of this corporation are declared in its charter to be not only to manufacture, sell, and lease shoe machinery, but to engage in practically every conceivable line of human industry and mercantile pursuits.

1305 United Shoe Machinery Corporation, shortly after its organization, acquired substantially all of the capital stock, preferred and common, of United Shoe Machinery Company, of New Jersey, giving therefor one share of the preferred stock of the corporation and 37½ cents in cash for each share of preferred, and one and one-half shares of its common stock and 75 cents in cash for each share of common stock, of United Shoe Machinery Company, of New Jersey. The dividends thus distributed among the common-stock holders amounted to about $5,360,404 in stock and about $321,624 in cash. At the time of the organization of United Shoe Machinery Corporation, United Shoe Machinery Company, of New Jersey, had an issued capital stock of $20,657,894 ($9,937,084.50 preferred, $10,720,809.50 common). By the issue of one and one-half shares of the common stock of United Shoe Machinery Corporation for each share of common stock of United Shoe Machinery Company, of New Jersey, the corporation required an issued capital stock of $26,018,298.75 ($9,937,084.50 preferred, $16,081,214.25 common).

The business of United Shoe Machinery Corporation has been confined to holding the stock of United Shoe Machinery Company, of New Jersey, and financing said company and its subsidiaries. United Shoe Machinery Company, of New Jersey, has continued as an operating company. Its officers and directors always have been and now are the officers and directors of United Shoe Ma-

1306 chinery Corporation. United Shoe Machinery Corporation and United Shoe Machinery Company, of New Jersey, acting directly in the name of either or both of them, or through other defendant corporations, own a controlling interest in the capital stock of all the other corporate defendants, except Boston Blacking Company, and dictate the election of their officers and directors, and dominate and control the conduct of their business and affairs. All of them are engaged in interstate trade and commerce, and many of them in foreign trade and commerce, in the sale, lease, and shipment of shoe machinery, and by agreement each one refrains from competing with each and every one of the others, and all have cooperated and are now cooperating for the purpose of securing the retirement from the shoe machinery business, except in association with them as employees or otherwise, of all successful, capable persons engaged

therein, to exclude all others therefrom, to destroy competition therein, and to monopolize the same for their own use and benefit to the detriment of the boot and shoe manufacturers engaged in business throughout the United States and of the public generally.

X.

PROFITS.

As the result of the unlawful contracts, combinations, conspiracies, and monopolies heretofore detailed defendants and others connected and associated with them have made enormous and
1307 unreasonable profits, the extent of which can not with accuracy be stated because, among other things, of the large number of associated corporations, the manipulations of securities, and the excessive valuation of properties for which stock was given in exchange.

United Shoe Machinery Company, of New Jersey, after it took over, in 1899, the properties and businesses of the old concerns, began business with an issued capital stock of $17,318,425 ($8,657,700 preferred, $8,660,725 common), and a surplus of about $500,000 in cash. That company sold stock for cash, during the period from 1899 to May, 1905, when its stock was taken over by United Shoe Machinery Corporation, amounting approximately to $3,000,000. During that period it paid dividends of 6 per cent on its preferred, aggregating about $3,466,085, and on its common stock 8 per cent, aggregating about $4,837,939, and accumulated a surplus of approximately $6,710,914.

From its organization in 1905 to July, 1911, United Shoe Machinery Corporation has paid 6 per cent per annum on its preferred stock (aggregating about $5,700,000) and has paid in stock dividends to its holders of common stock about $9,167,780 and approximately $11,000,000 in cash, or a total of about $20,167,780 as dividends to common-stock holders.

In May, 1905, United Shoe Machinery Company, of New Jersey, had a surplus of approximately $6,710,914. On March 1, 1911,
1308 that company's surplus was approximately $20,669,799, and that of United Shoe Machinery Corporation about $5,787,596, or a total of $26,457,395. Deducting the surplus of $6,710,914 which United Shoe Machinery Company, of New Jersey, had in 1905, their reports to stockholders show that the net earnings of the two companies since March 1, 1905, amount to approximately $45,314,261, or more than 37 per cent per annum on an actual investment of not exceeding $20,000,000.

XI.

EFFECT OF DEFENDANTS' UNLAWFUL AGREEMENTS, COMBINATIONS, AND CONSPIRACIES.

By virtue of the unlawful contracts and combinations above described defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for attaching the bottoms to the uppers of boots and shoes, and kindred and auxiliary machines; they have obligated scores of successful shoe machinery men to refrain from trade and commerce therein and have acquired a monopoly of interstate and foreign trade and commerce in shoe machinery, and have become so powerful that successful competition therein with them by any concern is practically impossible.

The extent of their monopoly is indicated by the fact that they now control more than 98 per cent of the manufacture, sale,
1309 and lease of all the essential and kindred and auxiliary machines and devices manufactured and used in the United States for attaching the bottoms to the uppers of boots and shoes; and they have it within their power to double or treble the royalties for the use of their machines whenever they may deem such action advisable.

XII.

CONCLUSION.

The acts of defendants, hereinbefore described are violative of the said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," in this:

1st. The organization of United Shoe Machinery Company, of New Jersey, by a consolidation of the properties and businesses of the several companies mentioned, was unlawful, because some of said companies were engaged in interstate and foreign trade and commerce in a line of business competing with that of others of said companies, which competition was thereby destroyed, and it was intended by the individuals who originated and perfected said plan of organization that all competition between the component companies should be destroyed, and it was further intended by the consolidation of the ownership of the principal lines of shoe machinery to create a dominating and irresistible power in the entire shoe
1310 machinery business, and to use that power, in the manner herein described, to monopolize interstate and foreign trade and commerce in shoe machinery, all of which has been fully consummated.

2nd. The various provisions in the leases and license agreements heretofore described are unlawful in this:

(a) It was not lawful for the lessor to exact of the lessee (i) a covenant that the lessee should use exclusively machines of the lessor to perform the same kind of work as that performed by the leased machine; (ii) a covenant that the lessee would use in accomplishing work other than that for which the leased machine was designed only machines controlled or leased by the lessor; (iii) a condition that should the lessee violate either of the covenants mentioned the lessee would thereby forfeit the use, not only of the machine leased, but other machines, both those designed to accomplish the same work as the leased machine and those designed to accomplish work entirely different; (iv) a covenant that the lessee should use the leased machine for seventeen years.

(b) All of the covenants and conditions above described in paragraph (a) are unlawful, regardless of whether the leased machines, mechanisms, or devices are protected by valid letters patent; in a number of instances the basic patents on the leased machines expired after the execution and before the termination of the lease
1311 and license agreements, and in others, the machines were not protected by valid basic patents when leased.

(c) The covenants and conditions appearing in the various lease and license agreements, examples of which are appended hereto, as exhibits, were and are required in pursuance of the general intent and purpose of defendants to restrain interstate and foreign trade and commerce and to monopolize the same, and are one of the most effective parts of the scheme initiated by the contracts and conspiracy to organize United Shoe Machinery Company, of New Jersey, and continued to the present time by the acquisition of the properties of competing companies and by the other acts heretofore described.

3rd. The acquisition by defendants, operating through United Shoe Machinery Company, of New Jersey, of the properties and business, or the controlling influence over the properties and business, of each and every one of the individuals and corporations heretofore described, was unlawful, because made with an intent, and in pursuance of a combination and conspiracy, to restrain and monopolize interstate and foreign trade and commerce, and did in fact restrain and monopolize the same.

4th. The other unfair and oppressive acts heretofore described were unlawful because made with the intent and as a part of a scheme to restrain and monopolize interstate and foreign trade
1312 and commerce, and because they did in fact restrain and monopolize the same; and said acts being unfair and oppressive,

and committed for an unlawful purpose, render the entire scheme of which they were a part unlawful.

5th. The organization, as described, of United Shoe Machinery Corporation and the acquisition by it of the capital stock of United Shoe Machinery Company, of New Jersey, was and is unlawful because done to better enable defendants to expand their business in shoe machinery and to render their restraint upon and monopoly of interstate and foreign trade and commerce in such business the more complete and effectual.

Complainant therefore alleges that the contracts and agreements by which United Shoe Machinery Company, of New Jersey, was organized and every contract and agreement by which it has acquired the business and properties of former competing concerns since its organization were and are unlawful, and that the continued existence of United Shoe Machinery Company, of New Jersey, and of United Shoe Machinery Corporation, and of the combinations and agreements between them and the several individual and corporate defendants, is an open defiance of the law, and that said organizations should be dissolved, and said contracts, combinations, and conspiracies should be declared null and void in order that the normal condition of competition in interstate and foreign trade and commerce in shoe machinery may be restored.

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XIII.

PRAYER.

Inasmuch as adequate remedy in the premises only can be obtained in equity, your petitioner prays your honors—

1. To order, adjudge, and decree that the contracts, combinations, and conspiracies hereinbefore described are unlawful and that all acts done or to be done in furtherance of the same are in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and restrained from doing any act in pursuance of or for the purpose of carrying out the same.

2. That this court adjudge and decree that all lease and license agreements containing like or similar exclusive-use and tying provisions, as are contained in the forms hereto appended, which defendants have devised, adopted, and used, and are now using, and which are now in force, be declared illegal and void, and that the defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and

restrained from enforcing or attempting to enforce any of the exclusive-use and tying provisions of such lease and license
1314 agreements, or of any lease and license agreements of like or similar character which defendants have used and are now using and which are now in force.

3. That defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and restrained from making or enforcing any contracts, arrangements, agreements, or requirements with boot or shoe manufacturers to purchase or lease from said defendants either lasting machines, welt-sewing machines, or outsole-stitching machines, heeling machines, lacing machines, eyeletting machines, pulling-over machines, clicking machines, auxiliary machines, finishing machines, or pegging machines, or any other machines, mechanisms, tools, or devices, or any of them, owned and controlled by defendants, by which such boot and shoe manufacturers are compelled to purchase or lease any one or more of the above-named machines, or any other machines, mechanisms, tools, or devices, from said defendants, as a condition to the purchase or lease or supply of any other or all of said machines, or of any other machines, mechanisms, tools, or devices, or of any of them; and that defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and restrained from discriminating against any boot or shoe manufacturer desiring to purchase or lease any of said machines, or any other machines, mecha-
1315 nisms, tools, or devices, or any of them, because of the fact that such boot or shoe manufacturer purchases or leases any one or more of said machines from others.

4. That defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and restrained from making discounts or granting rebates, either by way of reduction of royalties on machines leased and licensed by them, or by cash discounts, or by any other scheme or device whatsoever, to boot or shoe manufacturers, to use exclusively, or as an inducement to them to use exclusively machines, mechanisms, tools, or devices, or any of them, owned and controlled by defendants.

5. That the court order, adjudge, and decree that United Shoe Machinery Corporation and United Shoe Machinery Company, of New Jersey, is each a combination in restraint of interstate and foreign trade and commerce, and that each has attempted and is attempting to monopolize, is in combination and conspiracy with other persons and corporations to monopolize, and has monopolized, part of the trade and commerce among the several States of the United States and with foreign nations, and order, adjudge, and

decree that each of them be restrained from engaging in interstate or foreign commerce, and that each of them be dissolved and sepa-
1316 rated into such parts that no one of them will constitute a monopoly or can become a monopoly of the shoe machinery business, or, if the court should be of the opinion that the public interest will be better subserved thereby, that receivers be appointed to take possession of all the property, assets, business, and affairs of said defendants and wind up the same, and otherwise take such course in regard thereto as will bring about conditions in trade and commerce among the States and with foreign nations in harmony with law.

6. That the holding of stock by one of the defendant corporations in another under the circumstances shown be declared illegal, and that each of them be enjoined from continuing to hold or own such shares in another and from exercising any right in connection therewith.

7. That defendants, and each of them, be enjoined from continuing to carry out the purposes of the above-described contracts, combinations, conspiracies, attempts to monopolize, and monopolies by the means herein described, or by any other, and be required to desist and withdraw from all connection with the same.

8. That petitioner have such other, further, and general relief as may be proper.

9. To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpœna di-
1317 rected to the said defendants, United Shoe Machinery Company, of New Jersey, United Shoe Machinery Corporation, United Shoe Machinery Company, of Maine, United Shoe Repairing Machine Company, United-Xpedite Finishing Company, United Awl & Needle Company, United Fast Color Eyelet Company, O. A. Miller Treeing Machine Company, W. W. Cross & Company, Inc., S. A. Felton & Son Company, Campbell-Bosworth Machinery Company, Boston Blacking Company, J. C. Rhodes & Company, Inc.; The Rimmon Eyelet Company, Ross-Moyer Manufacturing Company, J. K. Krieg Company, Booth Brothers Company, S. O. & C. Corporation, Ellis Lacer Company, Thomas G. Plant Company, Sidney W. Winslow, William Barbour, Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Frank L. Babbott, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Frank Wood, William Woodward, Harold G. Donham, and Edward N. Chase, and each and every one of them, commanding them, and each of them, to appear herein and answer, but not under oath (answer under oath being hereby expressly waived), the

allegations contained in the foregoing petition and abide by and perform such orders and decree as the court may make in the premises, and pending a final hearing of this case cause a tempo-
1318 rary restraining order to issue enjoining the defendants, and each of them, and each of their officers, agents, and servants, as hereinbefore prayed.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
GEO. W. WICKERSHAM,
Attorney General.
J. A. FOWLER,
Assistant to the Attorney General.
WILLIAM S. GREGG,
Special Assistant to the Attorney General.

1320 District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY et al.	In Equity.—No. 301 (C.C.911).

Joint and several answer of the defendants Sidney W. Winslow, William Barbour, Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Frank L. Babbott, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Frank Wood, William Woodward.

[Filed April 1, 1912.]

These defendants, jointly and severally, now, and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants for answer say:

I. These defendants admit that they were at the time of the filing of the bill and now are directors of the United Shoe
1321 Machinery of New Jersey and the United Shoe Machinery Corporation, as alleged on pages 6 and 7 of said bill, except

[NOTE.—Pages 1 to 223, inclusive, comprise petition of United States of America, Petitioner, in this case, filed in Circuit Court December 12, 1911, and is bound in a separate volume.]

they say that defendant Frank L. Babbott was not at the time of the filing of the bill and is not now a director of either of said corporations.

II. These defendants further admit that Sidney W. Winslow was, at the time of the filing of the bill, and now is, president and director of the respective corporations of which he is alleged in said bill, at page 7, to be the president and director.

These defendants admit that William Barbour was, at the time of the filing of the bill, and now is, vice president and director, respectively, of the respective corporations of which he is alleged in said bill, at page 7, to be the vice president and director.

These defendants admit that George W. Brown was, at the time of filing of the bill, and now is, vice president and director, respectively, of the respective corporations of which he is alleged in said bill, at page 8, to be the vice president and director.

These defendants admit that Edward P. Hurd was, at the time of the filing of the bill, and now is, vice president and director, respectively, of the respective corporations of which he is alleged in said bill, at page 8, to be the vice president and director.

These defendants admit that Louis A. Coolidge was, at the time of the filing of the bill, and now is, a director of the corporations of which he is alleged in said bill, at pages 8 and 9, to be a director.

These defendants admit that Edwin P. Brown was, at the time of the filing of the bill, and now is, a director of the corporation of which he is alleged in said bill, at page 9, to be a director.

These defendants further admit the respective residences of each of the said defendants as set forth on pages 9 and 10 of said bill.

III. These defendants jointly and severally deny every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly deny each and every allegation, item, and particular contained in the first twelve sections of the petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

1322 IV. Further answering, these defendants jointly and severally say that the United Shoe Machinery Company of New Jersey was organized under the laws of the State of New Jersey in February, 1899, and more than twelve years prior to the bringing of this petition, for the purposes and with the powers set forth and contained in its charter, among which are the following:

"To manufacture, buy, sell, lease, operate, and deal in and with all kinds of machinery, tools and implements, and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate, and deal in and

with all sorts of boot and shoe machinery and every kind of mechanism, contrivance, implement, tool, material, or thing in any way whatsoever connected with or useful in connection with the manufacture of boots, shoes, and footwear or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices, or contrivances hereinbefore mentioned: to produce, prepare, and manufacture, buy, sell, and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials, or fabrics are produced: to manufacture, buy, sell, and deal in and with boots, shoes, and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber, or any other materials or fabrics; and in general to produce, prepare, manufacture, and deal in and with goods, wares, merchandise, property, materials, and things of every class and description. . . .

"To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, sell, assign, or otherwise dispose of any and all trade-marks, trade names, and distinctive marks, copyrights, and patent rights, and all inventions, improvements, and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade-marks, patents, licenses, concessions, processes and the like."

and these defendants offer to produce at the trial of this case a certified copy of the said charter of said United Shoe Machinery Company of New Jersey, and make profert thereof.

V. Further answering, these defendants jointly and severally say that shortly after the organization of the United Shoe Machinery Company of New Jersey and pursuant to and in accordance
1323 with the terms of its said charter and more than twelve years prior to the bringing of this petition, said United Shoe Machinery Company of New Jersey acquired the capital stock, or a majority of the same, of the following corporations, organized under the laws of the State of Maine: Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, Davey Pegging Machine Company, and the Goodyear Shoe Machinery Company of Canada, a corporation organized under the laws of the State of New Jersey; and thereafter acquired the business, assets, and letters patent of each of said corporations.

Each of said corporations, at the time of such acquisition, was engaged in an independent and noncompeting business, differing from that of any others of the said corporations.

Each of said corporations, except the Goodyear Shoe Machinery Company of Canada, the International Goodyear Shoe Machinery Company, and the International Eppler Welt Machine Company, at the time of such acquisition was engaged, under letters patent of the United States, in the manufacture of machines and parts thereof used in the manufacture of boots and shoes, and each of said corporations leased the machines so manufactured by it to shoe manufacturers, and licensed such shoe manufacturers to use the same under its said letters patent.

The Goodyear Shoe Machinery Company of Canada, the International Goodyear Shoe Machinery Company, and the International Eppler Welt Machine Company, at the time of such acquisition, were engaged, under letters patent of the foreign countries in which they did business, in the manufacture of machines and parts thereof used in the manufacture of boots and shoes, and each of said corporations, respectively, leased the machines so manufactured by it to shoe manufacturers and licensed such shoe manufacturers to use the same under its said letters patent.

VI. Further answering, these defendants jointly and severally say that the organization of the United Shoe Machinery Com-
1324 pany of New Jersey and its acquisition of the capital stock and businesses of said last-named corporations, as set forth in the two preceding paragraphs hereof, was simply the fusion of several corporations owning noncompeting, complementary machines covered by letters patent of the United States into one corporation, and was made with the expectation of an increase in business, economies in administration, and decrease in expenses, and cessation of patent litigation between the companies purchased, which had been expensive to them and annoying to shoe manufacturers, which results it was expected could be attained without increase of cost to the users of machinery made by the United Shoe Machinery Company of New Jersey, and that better attention to the care of the machines and assistance to the users could be afforded by the said United Shoe Machinery Company of New Jersey.

That said organization and acquisition was nothing more than the combination of various elements of machinery, all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically and of furnishing a lessee the whole or any part of a gradually developed system of machines for use in the manufacture of shoes, and was and is in strict and normal compliance with modern trade progress.

VII. Further answering, these defendants jointly and severally say that since the organization of said United Shoe Machinery Company of New Jersey in 1899, said United Shoe Machinery Company of New Jersey has acquired from time to time, in the natural development and ordinary growth of its business, from various persons and corporations, various inventions, letters patent therefor, and businesses, in pursuance of the powers granted it under its said charter, all relating to the same art and the same school of manufactures, in order to better supply the demands of its lessees in accordance with the normal growth and development of its business. The greater part of said acquisitions are entirely new fields, having no connection with the machines originally acquired, owned, and manufactured by said United Shoe Machinery Company of New Jersey. Some of said acquisitions have more or less relation to
1325 the original lines of shoe machinery owned by said United Shoe Machinery Company of New Jersey, and were acquired by it for the purpose of compromising, settling, and avoiding expensive patent litigation, and for the purpose of protecting its lessees from suits for infringement of letters patent.

VIII. Further answering, these defendants jointly and severally say that the greater part of the business of said United Shoe Machinery Company of New Jersey consists in the manufacture, under letters patent of the United States, owned by it, of machines used in the manufacture of boots and shoes, and for the most part relating to the bottoming of boots and shoes, and in the leasing of machines so manufactured by it to shoe manufacturers, under licenses under said letters patent.

IX. Further answering, these defendants jointly and severally say that the greater part of the acts of said United Shoe Machinery Company of New Jersey complained of in said bill took place more than six years prior to the filing of said bill, and are barred by the statute of limitations.

X. Further answering, these defendants jointly and severally deny that they or either of them ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that they or either of them ever monopolized or attempted to monopolize said interstate trade or commerce or said foreign trade or commerce, and these defendants further jointly and severally say that if said United Shoe Machinery Company of New Jersey is engaged in interstate trade and commerce—which they deny—and has any monopoly of such trade or commerce—which they deny—then these

defendants jointly and severally say that any such monopoly is a valid and legal monopoly of such trade and commerce derived under and pursuant to and coextensive with letters patent of the United States or of foreign countries owned by said United Shoe Machinery Company of New Jersey.

XI. Further answering, these defendants jointly and severally say that defendant, John H. Connor, became a director of the
1326 United Shoe Machinery Company of New Jersey on or about March 8, 1911; that defendant Edwin P. Brown became a director of the United Shoe Machinery Company of New Jersey on or about September 13, 1911; that defendant Louis A. Coolidge became a director of the United Shoe Machinery Company of New Jersey on or about December 8, 1909; that defendant Henry B. Endicott became a director of the United Shoe Machinery Company of New Jersey on or about July 11, 1910; that defendant Edmund LeB. Gardner became a director of the United Shoe Machinery Company of New Jersey on or about June 27, 1908; that defendant Charles G. Rice became a director of the United Shoe Machinery Company of New Jersey on or about December 11, 1907; and that defendant William Woodward became a director of the United Shoe Machinery Company of New Jersey on or about June 15, 1907.

XII. These defendants jointly and severally admit that the United Shoe Machinery Corporation was organized under the laws of New Jersey, in May, 1905, with an authorized capital of fifty million dollars ($50,000,000) (fifteen million dollars preferred and thirty-five million dollars common), but deny that it was organized by the directors, officers, and stockholders of the United Shoe Machinery Company of New Jersey or for the purpose of destroying competition or restraining or monopolizing interstate or foreign trade and commerce in shoe machinery. And answering say said United Shoe Machinery Corporation was organized for the legitimate and lawful purposes in its charter set forth. They jointly and severally aver that from time to time since its organization said United Shoe Machinery Corporation has purchased stock of the United Shoe Machinery Company of New Jersey, and has paid therefor partly in shares of its own stock and partly in cash, and that it has acquired practically all the common and preferred shares of the latter company, and says that the stock of the United Shoe Machinery Company so acquired was worth in the market all that the United Shoe Machinery Corporation gave in exchange for it.

They jointly and severally admit that the business of the United Shoe Machinery Corporation has been up to the time of bringing this bill holding shares of stock of the United Shoe Machinery
1327 Company, and since September, 1910, shares of stock of the Thomas G. Plant Company, and that it has not engaged in

manufacturing shoe machinery or in trade or commerce of any kind therein.

They jointly and severally admit that the officers and directors of said United Shoe Machinery Corporation are officers and directors of the United Shoe Machinery Company of New Jersey, but they jointly and severally deny that said United Shoe Machinery Corporation holds a controlling interest in any of the corporate defendants except said United Shoe Machinery Company of New Jersey and said Thomas G. Plant Company, and deny that it dictates the election of the officers and directors or dominates or controls the conduct of the business and affairs of any corporate defendant except its own.

They jointly and severally deny that said United Shoe Machinery Corporation is in any manner engaged in interstate or foreign trade or commerce or in the sale, lease, or shipment of shoe machinery, and deny that said United Shoe Machinery Corporation has or has at any time had any agreement with any other defendant or person whatsoever to refrain from competing with it, or that it has cooperated or is now cooperating with the other defendants or any of them to secure the retirement from the shoe machinery business of any persons or corporations whatsoever, or to exclude others therefrom, or destroy competition therein, or to monopolize the same to the detriment of the public or any person whatsoever.

All the other allegations of the bill not herein admitted are specifically denied.

And further answering, these defendants, jointly and severally, say that the United Shoe Machinery Corporation was organized for a lawful purpose and has always conducted its business and affairs in conformity with the law, has engaged in no combinations, contracts or agreements or monopolies in restraint of interstate or foreign trade or commerce.

And these defendants, jointly and severally, deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged, without this, that there is any other
1328 matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

By their solicitor:

H. G. DONHAM.

Answer of Defendant Harold G. Donham.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto himself all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer says:

I. This defendant admits that he is president and a director of the Rimmon Eyelet Company, as alleged respectively on pages 5 and 9 of said petition.

II. This defendant admits that the individual defendants named at the bottom of page 6 of said petition are directors of the United Shoe Machinery Company of New Jersey and the United Shoe Machinery Corporation, with the exception that Frank L. Babbott was not at the time of the filing of said petition a director of either corporation.

III. This defendant denies every allegation, item and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

1329 IV. Further answering, this defendant expressly denies that he is engaged in trade and commerce in shoe machinery, or that he ever combined, contracted and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation to restrain interstate and foreign trade and commerce in shoe machines used in the manufacture of boots and shoes, or in any other business, or that he ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this

honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

HAROLD G. DONHAM.

Answer of defendant United Shoe Machinery Corporation.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. As to all the allegations of the bill regarding conditions, events, and acts prior to its incorporation in May, 1905, this defendant is ignorant and leaves the complainant to prove the same if material.

1330 II. It admits it was organized under the laws of New Jersey, in May, 1905, with an authorized capital of fifty million dollars ($50,000,000) (fifteen million dollars preferred and thirty-five million dollars common), but denies that it was organized by the directors, officers, and stockholders of the United Shoe Machinery Company or for the purpose of destroying competition or restraining or monopolizing interstate or foreign trade and commerce in shoe machinery. And answering, says that it was organized for the legitimate and lawful purposes in its charter set forth. It avers that from time to time since its organization it has purchased stock of the United Shoe Machinery Company of New Jersey, and has paid therefor partly in shares of its own stock and partly in cash, and that it has acquired practically all the common and preferred shares of the latter company, and says that the stock of the United Shoe Machinery Company of New Jersey so acquired was worth in the market all that this defendant gave in exchange for it.

III. It admits that its business has been up to the time of bringing this bill, holding shares of stock of the United Shoe Machinery Company of New Jersey, and since September, 1910, shares of stock of the Thomas G. Plant Company, and that it has not engaged in manufacturing shoe machinery or in trade or commerce of any kind therein.

IV. It admits that Henry B. Endicott, Edwin P. Brown, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner,

Wallace F. Robinson, Samuel Weil, Frank Wood, William Woodward, and Louis A. Coolidge are directors of this defendant; that Sidney W. Winslow is its president and a director; that William Barbour is its vice president and a director; that George W. Brown is its vice president and a director; that Edward P. Hurd is its vice president and a director; but it says that Frank L. Babbott was not at the time of the bringing of the bill, and has not since been, a director.

V. It admits that its officers and directors are officers and directors of the United Shoe Machinery Company of New Jersey, but it denies that it holds a controlling interest in any of the cor-
1331 porate defendants except said United Shoe Machinery Company of New Jersey, and sai dThomas G. Plant Company, and denies that it dictates the election of the officers and directors or dominates or controls the conduct of the business and affairs of any corporate defendant except its own. It denies that it is in any manner engaged in interstate or foreign trade or commerce, or in the sale, lease, or shipment of shoe machinery, and denies that it has or has at any time had any agreement with any other defendant or person whatsoever to refrain from competing with it, or that it has cooperated, or is now cooperating, with the other defendants or any of them, to secure the retirement from the shoe machinery business of any persons or corporations whatsoever, or to exclude others therefrom or destroy competition therein, or to monopolize the same to the detriment of the public or any person whatsoever.

VI. All the other allegations of the bill not herein admitted are specifically denied.

VII. And further answering, this defendant says that it was organized for a lawful purpose and has always conducted its business and affairs in conformity with the law, has engaged in no combinations, contracts, or agreements or monopolies in restraint of interstate or foreign trade or commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

1332 *Answer of defendant United Shoe Machinery Company of New Jersey.*

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits the following allegations of Section I of the petitioner's bill, to wit:

That it is a corporation organized under the laws of New Jersey, carrying on business in the District of Massachusetts, with its office and place of business at Boston, Massachusetts, and that its president is Sidney W. Winslow, and that the amount of its issued capital stock, preferred and common, is as alleged in said Section I.

II. It admits that the defendants Henry B. Endicott, Edwin P. Brown, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, John H. Connor, Alfred R. Turner, Wallace F. Robinson, Samuel Weil, Frank Wood, and William Woodward are directors of this defendant; that Sidney W. Winslow is its president and a director; that William Barbour is a vice president and a director; that George W. Brown is a vice president and a director; that Edward P. Hurd is a vice president and a director; that Louis A. Coolidge is a director; but says that the defendant Frank L. Babbott was not at the time of the filing of petitioner's bill, and is not now, a director of this defendant.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, con-
1333 tained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant says that it was organized under the laws of the State of New Jersey in February, 1899, and more than twelve years prior to the bringing of this petition, for the purposes and with the powers set forth and contained in its charter, among which are the following:

"To manufacture, buy, sell, lease, operate and deal in and with all kinds of machinery, tools, and implements, and mechanical de-

vices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate, and deal in and with all sorts of boot and shoe machinery and every kind of mechanism, contrivance, implement, tool, material or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes, and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare, and manufacture, buy, sell, and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell, and deal in and with boots, shoes and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber, or any other materials or fabrics; and in general to produce, prepare, manufacture, and deal in and with goods, wares, merchandise, property, materials, and things of every class and description. * * *

"To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, sell, assign, or otherwise dispose of any and all trademarks, trade-names and distinctive marks, copyrights and patent rights, and all inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trademarks, patents, licenses, concessions, processes and the like."

and this defendant offers to produce at the trial of this case a certified copy of its said charter, and makes profer thereof.

V. Further answering, this defendant says that shortly after its organization, and pursuant to and in accordance with the terms
1334 of its said charter, and more than twelve years prior to the bringing of this petition, it acquired the capital stock, or a majority of the same, of the following corporations, organized under the laws of the State of Maine: Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, Davey Pegging Machine Company, and the Goodyear Shoe Machinery Company of Canada, a corporation organized under the laws of the State of New Jersey; and thereafter acquired the business, assets and letters patent of each of said corporations.

Each of said corporations, at the time of such acquisition, was engaged in an independent and noncompeting business, differing from that of any others of the said corporations.

Each of said corporations, except the Goodyear Shoe Machinery Company of Canada, the International Goodyear Shoe Machinery Company, and the International Eppler Welt Machine Company, at the time of such acquisition, was engaged, under letters patent of the United States, in the manufacture of machines and parts thereof used in the manufacture of boots and shoes, and each of said corporations leased the machines so manufactured by it to shoe manufacturers, and licensed such shoe manufacturers to use the same under its said letters patent.

The Goodyear Shoe Machinery Company of Canada, the International Goodyear Shoe Machinery Company, and the International Eppler Welt Machine Company, at the time of such acquisition, were engaged, under letters patent of the foreign countries in which they did business, in the manfacture of machines and parts thereof used in the manufacture of boots and shoes, and each of said corporations respectively leased the machines so manufactured by it to shoe manufacturers, and licensed such shoe manufacturers to use the same under its said letters patent.

VI. Further answering, this defendant says that the organization of the United Shoe Machinery Company and its acquisition of the capital stock and businesses of said last named corporations, as
1335 set forth in the two preceding paragraphs hereof, was simply the fusion of several corporations owning noncompeting, complementary machines, covered by letters patent of the United States, into one corporation, and was made with the expectation of an increase in business, economies in administration, and decrease in expenses, and cessation of patent litigation between the companies purchased, which had been expensive to them and annoying to shoe manufacturers; which results it was expected could be attained without increase of cost to the users of machinery made by the United Shoe Machinery Company of New Jersey, and that better attention to the care of the machines and assistance to the users could be afforded by the said United Shoe Machinery Company of New Jersey.

That said organization and acquisition was nothing more than the combination of various elements of machinery all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically, and of furnishing a lessee the whole or any part of a gradually developed system of machines for use in the manufacture of shoes, and was and is in strict and normal compliance with modern trade progress.

VII, Further answering, this defendant says that since its organization in 1899 this defendant has acquired from time to time, in the natural development and ordinary growth of its business, from various persons and corporations, various inventions, letters patent therefor, and businesses, in pursuance of the powers granted it under its said charter, all relating to the same art and the same school of manufactures, in order to better supply the demands of its customers in accordance with the normal growth and development of its business. The greater part of said acquisitions are entirely new fields, having no connection with the machines originally acquired, owned, and manufactured by this defendant. Some of said acquisitions have more or less relation to the original lines of shoe machinery owned by this defendant, and were acquired by it for the purpose of compromising, settling, and avoiding expensive patent litigation, and for the purpose of protecting its lessees from suits for infringement of letters patent.

1336 VIII. Further answering, this defendant says that the greater part of its business consists in the manufacture, under letters patent of the United States, owned by it, of machines used in the manufacture of boots and shoes, and for the most part relating to the bottoming of boots and shoes, and in the leasing of machines so manufactured by it to shoe manufacturers, under licenses under said letters patent.

IX. Further answering, this defendant says that the greater part of the acts of this defendant complained of in said bill took place more than six years prior to the filing of said bill, and are barred by the statute of limitations.

X. Further answering, this defendant denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that it ever monopolized or attempted to monopolize said interstate trade and commerce, or said foreign trade and commerce, and this defendant further says that if this defendant is engaged in interstate trade and commerce, which it denies, and has any monopoly of such trade or commerce, which it denies, then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States or of foreign countries, owned by it.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary

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for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

1337 *Answer of defendant J. K. Kreig Company.*

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of New York, with its offices and place of business at New York City, and that its president is defendant Sidney W. Winslow, and that its issued capital stock is fifty thousand dollars ($50,000) at par, as set forth on pages 5 and 6 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the business of selling general supplies for shoe manufacturers, such as wax, thread, needles, blacking, eyelets, and practically all kinds of supplies, and that it acts as distributing agent for the United Shoe Machinery Company of New Jersey of machine parts manufactured by said United Shoe Machinery Company of New Jersey for machines leased by said United Shoe Machinery Company; that it also buys from said United Shoe Machinery Company of New Jersey, and sells for its own account, machine parts for use on machines which are sold on the market; that it is distributing agent for fastening material—that is, wire nails, and similar material—for use in metallic department machinery leased by said United Shoe Machinery Company of New Jersey.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

1338 IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes or in any other business; or that it ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant Booth Brothers Company.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of New York, with its offices and place of business at Rochester, New York, and says that it was organized in 1908. It admits that its president is defendant Sidney W.
1339 Winslow, and that its issued capital stock is twenty-five thousand dollars ($25,000) at par, as set forth on page 6 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the manufacture of a machine known as the "Booth Impression Stitch Burnishing Machine," a "wheeling machine," and a "fudge stitch machine," which it sells exclusively to the United Shoe Machinery Company, of New Jersey. That in addition it manufactures machines known as the "Columbia Beader," "Victor Beader,"

"Sandal Snipper," and an ink shaking device, which this defendant sells either directly to consumers or to the United Shoe Machinery Company, of New Jersey.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes or in any other business; or that it ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed,
1340 with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant W. W. Cross & Company (Inc.).

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits the following allegations of Section I of the petitioner's bill, on page 4 thereof, to wit, that it is a corporation organized under the laws of the State of Maine, with its

offices and places of business in Brockton, Massachusetts, and that its president is defendant Sidney W. Winslow, and that the amount of its issued capital stock is as set forth on said page 4 of said bill.

II. Further answering, this defendant says that it is engaged in the manufacture of tacks and nails, at Brockton, Massachusetts, and sells in the State of Massachusetts practically its entire output to the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, doing business in Massachusetts.

III. This defendant denies every allegation, item and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant expressly denies that it is engaged in the manufacture, sale and shipment, in inter-
1341 state commerce, of said nails and tacks, or that it is engaged in interstate commerce at all, and expressly denies that it ever combined, contracted and conspired with any person, firm or corporation mentioned in said bill of complaint, or with any other person, firm or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that it ever monopolized or attempted to monopolize said interstate trade and commerce, or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of Defendant Xpedite Finishing Company.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or

may be had or taken to the many errors, uncertainties and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of Maine, with its offices and place of business at Boston, Massachusetts; that its president is defendant
1342 Sidney W. Winslow; that its issued capital stock is one million dollars ($1,000,000) at par, as set forth on page 3 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the business of leasing a machine known as the "Xpedite Finishing Machine," and tools to go with the same, to shoe manufacturers in the United States, under licenses under letters patent of the United States owned by it; said machines being used in the finishing of heels.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that it ever monopolized or attempted to monopolize said interstate trade and commerce, or said foreign trade and commerce; and this defendant further says that if this defendant is engaged in interstate trade and commerce—which it denies—and has any monopoly of such trade or commerce—which it denies—then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and
1343 avoided or denied, is true, all which matters and things this

defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant United Shoe Repairing Machine Company.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits the following allegations of Section I of the petitioner's bill, to wit, that it is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Massachusetts, and that its president is defendant Sidney W. Winslow, and that the amount of its issued capital stock is fifty thousand dollars ($50,000) at par, as alleged in said Section I of said bill.

II. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

III. Further answering, this defendant says that it was organized in 1908, for the purpose of supplying the demand of cobblers for machines used in the repairing or cobbling of boots and shoes, and that since its organization in July, 1908, it has applied itself
1344 strictly to the business of supplying the demand of such cobblers for machines used in the repairing of boots and shoes. Its machines are for the most part covered by letters patent, and are leased to cobblers throughout the United States.

IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes or in any other business; or that it ever monopolized or

attempted to monopolize said interstate trade and commerce or said foreign trade and commerce; and this defendant further says that if this defendant is engaged in interstate trade and commerce—which it denies—and has any monopoly of such trade and commerce—which it denies—then this defendant says any such monopoly is a valid and legal monopoly of such trade and commerce, derived under and pursuant to and coextensive with letters patent of the United States, owned by said United Shoe Machinery Company of New Jersey, from whom this defendant purchases its machines.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

1345 *Answer of defendant O. A. Miller Treeing Machine Company.*

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of Maine, with its offices and place of business at Brockton, Massachusetts; that its president is defendant Sidney W. Winslow; and that its issued capital stock is two hundred thousand dollars ($200,000) at par, as set forth on page 4 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the business of manufacturing, selling, and leasing boot and shoe treeing machines, tree legs, tree feet, and other parts thereof, vamp-creasing machines, Miller breaking-in machines, Victor power irons, and electric and gas heated appliances used in the manufacture of boots and shoes, under letters patent of the United States, owned by it.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of
1346 boots and shoes or in any other business; or that it ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce; and this defendant further says that if this defendant has any monopoly of interstate trade or commerce—which it denies—then this defendant says that any such monopoly is a valid and legal monopoly of such trade or commerce, derived under and pursuant to and coextensive with letters patent of the United States owned by it.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant Ross-Moyer Manufacturing Company.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of Ohio; that it has offices and a place of busi-

ness at Cincinnati, Ohio; that its president is defendant Sidney W. Winslow; and that its issued capital stock is one hun-
1347 dred ninety-seven thousand four hundred dollars ($197,400) at par, as set forth on page 5 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the business of selling general supplies for shoe manufacturers, such as wax, thread, needles, blacking, and eyelets, and practically all kinds of supplies, and that it acts as distributing agent for the United Shoe Machinery Company of machine parts manufactured by the United Shoe Machinery Company for machines leased by the United Shoe Machinery Company; that it also buys from United Shoe Machinery Company, and sells for its own account, machine parts for use on machines which are sold on the market; that it is distributing agent for fastening material—that is, wire, nails, and other material for use in metallic department machinery leased by said United Shoe Machinery Company.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of the petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes or in any other business; or that it ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this
1348 defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant United Shoe Machinery Company, of Maine.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of Maine, with its offices and place of business at Boston, Massachusetts; that defendant Sidney W. Winslow is its president; and that its issued capital stock is three million dollars ($3,000,000) at par, as set forth on page 3 of said bill of complaint.

II. Further answering, this defendant says that the greater part of its business consists in the leasing and licensing under letters patent of the United States of machines used in the manufacture of boots and shoes to shoe manufacturers engaged in business in various States of the United States.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant denies that it ever
1349 combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that it ever monopolized or attempted to monopolize said interstate trade and commerce, or said foreign trade and commerce; and this defendant further says that if this defendant is engaged in interstate trade and commerce—which it denies—and has any monopoly of such trade or commerce—which it denies—then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said

petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant Edward N. Chase.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer says:

I. This defendant denies that the Ellis Lacer Company is a
1350 corporation organized under the laws of the State of Maine, with its offices and place of business at Boston, Massachusetts, and that this defendant is its president, as alleged on page 6 of said bill of complaint.

II. Further answering, this defendant denies that he is the president and director of the Ellis Lacer Company, as set forth on page 9 of said bill.

III. Further answering, this defendant says that the Ellis Lacer Company was a corporation organized under the laws of the State of Maine about the year 1903; that on or about the thirtieth day of September, 1911, pursuant to a vote of the majority of the stockholders of said corporation, at a meeting duly called for the purpose, this defendant, as president of said corporation, at that time filed in the Supreme Court of the State of Maine, sitting in and for the county of Kennebec, a petition for the dissolution of said corporation, alleging, among other things, that said corporation had no assets and no liabilities and was not doing business; and that thereafter such proceedings were had that on the twenty-ninth day of November, 1911, a decree of dissolution of said corporation was entered in said suit in said Supreme Court of Maine, sitting in and for said county of Kennebec; and that thereupon said corporation was dissolved.

IV. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this
1351 defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

By his solicitor: H. G. DONHAM.

Replication to joint and several answer of defendants.

Sidney W. Winslow, William Barbour, Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Metz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Frank Wood, William Woodward.

[Filed April 8, 1912.]

For replication to the joint and several answer of the defendants Sidney W. Winslow, William Barbour, Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Frank Wood, and William Woodward, the United States of America says that the allegations of its petition are true, and that the defendants' joint and several answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1352 *Replication to answer of defendant Harold G. Donham.*

[Filed April 8, 1912.]

For replication to the answer of the defendant Harold G. Donham, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant United Shoe Machinery Corporation.

[Filed April 8, 1912.]

For replication of the defendant United Shoe Machinery Corporation, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant United Shoe Machinery Company of New Jersey.

[Filed April 8, 1912.]

For replication to the answer of the defendant United Shoe Machinery Company of New Jersey, the United States of America says that the allegations of its petition are true, and that the
1353 defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant J. K. Krieg Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant J. K. Kreig Company, the United States of America says that the allegations of its

petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant Booth Brothers Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant Booth Brothers Company, the United States of America says that the allegations of its petition are true and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1354 *Replication to answer of defendant W. W. Cross & Company, Incorporated.*

[Filed April 8, 1912.]

For replication to the answer of the defendant W. W. Cross & Company, Incorporated, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District ofMassachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant United Xpedite Finishing Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant United Xpedite Finishing Company, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant United Shoe Repairing Machine Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant United Shoe Repairing Machine Company, the United States of America says that the allegations of its petition are true, and that the de-
1355 fendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant O. A. Miller Treeing Machine Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant O. A. Miller Treeing Machine Company, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant Ross-Moyer Manufacturing Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant Ross-Moyer Manufacturing Company, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1356 *Replication to answer of defendant United Shoe Machinery Company of Maine.*

[Filed April 8, 1912.]

For replication to the answer of the defendant United Shoe Machinery Company of Maine, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant Edward N. Chase.

[Filed April 8, 1912.]

For replication to answer of defendant Edward N. Chase, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1357 *Motion for leave to dismiss as to certain defendants.*

[Filed April 16, 1912.]

And now comes the United States of America, petitioner in the above-entitled cause, and moves for leave to dismiss its petition as against the following parties named as defendants therein:

United Awl & Needle Company, United Fast Color Eyelet Company, S. A. Felton & Son Company, Campbell-Bosworth Machinery Company, Boston Blacking Company, J. C. Rhodes & Company (Inc.), The Rimmon Eyelet Company, S. O. & C. Corporation, Thomas G. Plant Company.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Upon the foregoing motion the following order was entered the same day:

Apr. 16, 1912. DODGE, J.: Motion for leave to dismiss allowed and petition dismissed as against the following parties named as de-

fendants therein: United Awl & Needle Co., United Fast Color Eyelet Co., S. A. Felton & Son Co., Campbell-Bosworth Machinery Co., Boston Blacking Co., J. C. Rhodes & Co. (Inc.), The Rimmon Eyelet Co., S. O. & C. Corporation, and Thomas G. Plant Co.

1358 *Motion for appointment of a special examiner, April 20, 1912.*

And now comes the petitioner, and moves that Charles K. Darling, Esquire, of Boston, Massachusetts, be appointed a special examiner to take the testimony in the above-entitled cause.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1359 *Notice to take testimony, April 26, 1912.*

The United States give notice that they desire evidence to be taken orally under the 67th rule in equity.

1360 *Docket entry of April 26, 1912.*

April 26, 1912. The United States gives notice that they desire evidence to be taken orally under the 67th rule in equity.

Order appointing examiner, April 26, 1912.

PUTNAM, J.: By agreement of parties Charles K. Darling, Esq., is hereby appointed special examiner to take evidence in this district under the sixty-seventh rule. The United States have four calendar months in which to take and file their proofs in chief. The respondents have four calendar months thereafter in which to take and file their proofs in answer, and the United States two calendar months thereafter in which to take and file their proofs in rebuttal.

1361 *Petitioner's protest against order of court prescribing private hearings in said cause.*

[Filed May 22, 1912.]

And now come the United States, petitioner in the above-entitled cause, and protest against and except to the order of a single judge of this honorable court in substance and effect that the public and the press shall be excluded from the hearings before the special examiner appointed by this court to take evidence in said cause, for the following reasons, namely:

First. Because the Attorney General of the United States having heretofore, to wit, on the twentieth day of May current, filed a cer-

tificate under the act of February 11, 1903, 32 St., 823, as amended, and copies thereof having been furnished by the clerk of said court to each of the circuit judges in this circuit, in accordance with the provisions of said act, this cause and all matters pertaining thereto thereupon became, and are, cognizable only by the special tribunal created by virtue of said act.

Second. Because the matters and issues involved in this petition are of great public importance, and the court has no jurisdiction to direct that they shall be kept from the public knowledge at any stage of the proceedings.

Third. Because, except only in the interest of public decency and morality, secret court proceedings are obnoxious to the administration of justice and to the principles of a free government.

Fourth. Because such an order is contrary to all precedent in causes in which the United States are a party, and especially
1362 in proceedings brought under the Sherman Act in which such hearings have invariably been fully open to the public, as, for example, in the Standard Oil case, the Tobacco case, the Bath Tub case, the Steel case, the Anthracite Coal case, the Steamship Trust case, and many others.

ASA P. FRENCH,
United States Attorney.
W. S. GREGG,
Special Assistant to the Attorney General.
EDWIN H. ABBOT, Junior.
Special Assistant U. S. Attorney.

1363 *Order that all further proceedings before the examiner cease until further order of court, May 22, 1912.*

PUTNAM, J: It is ordered, in view of the position taken by the United States that the power of a single judge ceases on filing a request for proceedings under the act of February 11, 1903, as amended by the act of June 25, 1910, that all further proceedings before the examiner cease until further order of court.

By the court:

CHARLES K. DARLING, *Clerk.*

1364 *Order of court designating three judges to sit in the case, May 28, 1912.*

Referring to the request of the Attorney General, filed on May 20, 1912, under the act approved June 25, 1910, chapter 428:

It appearing that Judge Schofield, circuit judge for this circuit, is, and will be, necessarily absent for an indefinite period by reason

of sickness, and the senior district judge regarding himself as disqualified, it is ordered, by the concurrence of Circuit Judges Colt and Putnam, that Honorable Arthur L. Brown, United States district judge for the District of Rhode Island, is assigned and designated to sit with said Circuit Judges Colt and Putnam in accordance with said statute and the request aforesaid.

It is further ordered that said judges, namely Circuit Judges Colt and Putnam and District Judge Brown, will hold the court, as required by the statute aforesaid and said request, at Boston at eleven o'clock on Tuesday, the eighteenth day of June next, or at such other time or times as may be hereafter designated, and at the time or times to which said sitting may be adjourned, for the purpose of hearing any matters proposed, or which may be proposed, by either of the parties in the case aforesaid.

By the court:

CHARLES K. DARLING, *Clerk.*

1365 *Docket entry of August 28, 1912.*

August 28, 1912. BROWN, J. (Colt, J., concurring; Putnam, J., sat at hearing, but did not participate in this opinion, having previously expressed an opinion on the question as a single judge): Opinion, the examiner will not, without the consent of both parties, allow the attendance of persons other than those mentioned in rule 67.

1366 District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA, PETITIONER, *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY et al.	No. 301. In Equity.

Before Colt, Putnam, and Brown, JJ.

Opinion of the court, August 28, 1912.

BROWN, J: The United States, having given notice that it desires evidence to be taken orally under the 67th rule in equity, contends that the public and the press should be admitted to the proceedings wherein the depositions of witnesses are to be taken before the examiner.

It is urged that the public and press should be afforded an opportunity to attend and to hear whatever may be said upon the examination before it has been reduced to writing and signed by the witness and before the deposition is presented to the court. This contention is not supported by the citation of any authority and is so

contrary to the usual practice both at law and in equity that it might be summarily disposed of save for the statement of the United States attorney that in cases under the Sherman Act such a course has been followed. The cases cited by the United States which uphold the undisputed principle of publicity in trials and in judicial proceedings do not in the slightest degree support the contention of the
1367 United States, and afford no tssistance upon the question before us. This question is whether the public and the press should be admitted to the taking of depositions for use at a trial not then begun, but which is to take place in the future.

The question is easily solved upon a consideration of the essential difference between a trial or a judicial proceeding, held by an officer with judicial authority, and the merely preliminary step of taking depositions.

Equity rule 67 provides that the examination shall take place in the presence of the parties or their agents by their counsel or solicitors; that the depositions taken shall be reduced to writing by the examiner; that the testimony of each witness shall be read over to him and signed by him in the presence of the examiner and such of the parties or counsel as may attend, etc. The examiner may note objections, but he "shall not have the power to decide upon the competency, materiality, or relevancy of the questions." The original depositions, authenticated by the signature of the examiner, must be transmitted by him to the clerk of the court, to be there filed of record in the mode prescribed by Revised Statutes, sec. 865.

Rule 69 provides that upon the return of the commissions and depositions into the clerk's office, publication may be ordered by any judge of the court upon due notice to the parties, and further provides for publication by consent in writing of the parties.

The nature of this proceeding is well described in Wigmore on Evidence, sec. 1376 (2): "This process of securing in advance the evidential material for a trial is a part of the preliminary procedure of courts," etc.

It is also described by Wigmore in sec. 1331 as "testimony given extrajudicially before a specially authorized officer for the purpose of subsequent use at a trial. . . . In a deposition the testimony is the writing taken down by the officer and signed by the deponent. The officer's writing is not his report of the witness' oral deposition; there is only one testimonial utterance—the writing."

Mr. Wigmore refers also to the chancery practice, saying:
1368 "In this practice all testimony was taken in writing, and in the theory the testimony or deposition was the writing and nothing else."

The brief of the United States attorney asserts, "The right of the public is to hear testimony, and that is not accorded when it is

given merely the privilege to read it." It is also asserted, "There is a right of the public to hear what is being said in this case while it is being said."

It is quite apparent from what we have said that such a supposed right has never existed in the practice of the chancery courts, nor has such a right in respect to the taking of depositions ever existed at law. Both common law judges and juries are compelled to receive testimony in the form of written depositions, and upon such written testimony of witnesses whom they have never seen nor heard may make decisions as to the rights of parties.

The public has a right to such form of testimony as the law provides shall be received at trials at law or at hearings in equity or upon other judicial proceedings. If judges and juries may not object that they have not seen and heard the witness while he was testifying, the press and public may not object.

Furthermore, neither at law nor in equity does a deposition become evidence in a case until it is offered by one of the parties; until there is an opportunity for a judicial hearing as to its competency. A party in a cause has a right to the protection of the court in a judicial hearing. In the proceedings before an examiner such right is not afforded him. No question of right is submitted to the examiner, and under the provision of equity rule 67 and under the doctrine of Blease v. Garlington, 92 U. S., 1, 7, the examiner must take down all the examination in writing. The party has the right to have his exceptions noted and to file further exceptions when the deposition is filed in court. "The testimony is taken to be submitted to the court where the suit is pending, and all questions upon the evidence, its materiality and sufficiency, are to be determined by it, and after it by an appellate court. Nelson v. United States, 201 U. S., 92. The only opportunity for redress which the party has against improper or irrelevant testimony follows the filing of the deposition. If all is to be made public
1369 before it is reduced to final form in writing and before there is an opportunity for a hearing upon the propriety and competency of the testimony, all effective protection against scandal, impertinence, and irrelevancy is practically gone.

When justice is being administered by a judicial officer, the public is entitled to attend, save under exceptional conditions, with which we need not deal.

In Cowley v. Pulsifer et al., 137 Mass., 392, Mr. Justice Holmes considered the question of the policy of publicity, and marks the distinction between what takes place in open court and the filing in the clerk's office of a petition containing a written preliminary charge. Of such preliminary steps he said: "These do not con-

stitute a proceeding in open court. Knowledge of them throws no light upon the administration of justice."

Due process of law requires that the parties have an opportunity to be heard. For the court to enforce a rule that the public and the press shall have an opportunity to listen before the parties to the case have an opportunity to be heard would be a plain violation of elementary rules of fair play. The proceeding before the examiner lacks the essential element—an opportunity to be heard by a judicial officer and to submit questions of right to a judicial officer.

Furthermore, another essential difference is that upon a trial or judicial proceeding the rights of the parties are submitted for an adjudication. A party in equity ordinarily may dismiss his bill at any time before final hearing. Houghton v. Whitin Machine Co., 160 Fed. Rep., 227; Morton Trust Co. v. Keith, 150 Fed. Rep., 606. Under the view of the United States a bill may be filed, the testimony of hostile witnesses may be presented to an examiner, the public and the press may attend, and the complainant may then dismiss the bill, leaving the defendant no opportunity to reply or to procure an adjudication which will offset the injurious statements of witnesses. It is manifest from the nature of depositions, because they are not yet legal evidence and because the parties against whom they are taken have had no opportunity for a hearing, that the proper practice is that which has been uniformly observed. Equity Rule 69 expressly provides for publication either upon the order of a judge or by consent of parties, after the return of the depositions by the examiner.

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In Patterson v. Colorado, 205 U. S., 454, 462, it was said:

"The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print. What is true with reference to a jury is true also with reference to a court."

Premature publication of proceedings before an examiner might make the author subject to proceedings for contempt. In Wigmore on Evidence, sec. 1836, the writer states that publication of proceedings may be prohibited, and "of palpably just grounds, there are at least two: First, that the proceeding is only a preliminary or ex parte one, and that a publication would therefore give an erroneous impression of the conduct of the parties; secondly, that conditions of popular emotion exist, amid which the publication before verdict rendered would tend to excite the public mind, to cause pressure upon the minds of the witnesses, the judge, and the jury, and thus to do injustice to one of the parties by preventing a fair and unbiased investigation of the facts."

If upon these grounds a court may stop the publication of proceedings which have actually taken place in open court, it would follow that the court, were it necessary, might prohibit by order the publication of preliminary proceedings before an examiner; but such order is not necessary, for the reason that by common understanding of the bar and bench the taking of depositions is a private and not a public proceeding.

Testimony at times must be taken out of court. Alexander v. United States, 201 U. S., 117. Trials are held at times and places appointed by law. Depositions may be prepared at times and places whereof no public notice is given by law or is required from the parties; at places not accessible to the public, and at places where there is no provision for the attendance of the public. The court is provided with officers for the preservation of order; the examiner, under ordinary conditions, is not so provided. Depositions are taken at death beds, in prisons, in remote and even foreign
1371 jurisdictions. They may be taken in many jurisdictions for a trial in another jurisdiction. Within a short time it has been reported in the public prints that depositions in cases under the Sherman Act have been taken at a room in the Parker House in Boston and at a room in the Narragansett Hotel in Providence. What truth there is in such reports we do not know, but they illustrate what may properly be done and is ordinarily done in the course of taking depositions, but what is entirely inconsistent with the contention that public policy requires the attendance of the press and the public.

The impropriety of the publication, pending the suit, of depositions so taken is manifest from what we have already said. It is evident that upon ordinary principles of fair play the examiner's office should not be used as a vehicle for spreading statements which have not been subjected to judicial test.

The fact that testimony orally delivered is often more satisfactory than testimony read from a document has no bearing upon the present question. The mere preference for testimony of this character yields to the considerations of convenience and necessity which justify the general law of depositions.

What is termed by Mr. Wigmore in sec. 1396 "demeanor evidence," while desirable, is not essential. If, in the course of a chancery suit, it is desirable to produce particular witnesses in open court in order that their demeanor may be observed, there is provision that the court may, in its discretion, "permit the whole, or any specific part of the evidence, to be adduced orally in open court on final hearing." See equity rules 67, 78.

The provision in these rules is an indication that oral proceedings before an examiner are regarded as essentially different from proceedings in open court. It is quite clear that the taking of deposi-

tions, either at law or in equity, is in no proper sense a trial or a part of a judicial trial, using the term to mean "that final examination and decision of matter of law as well as fact, for which every antecedent step is a preparation, which we commonly denominate the trial." Carpenter v. Winn, 221 U. S., 533, 538, 539; Hess v.
1372 Reynolds, 113 U. S., 73, 80; Carson v. Hyatt, 118 U. S., 289; Delaware County Commissioners v. Diebold Safe & Lock Co., 133 U. S., 473; Nelson v. United States, 201 U. S., 92; Cowley v. Pulsifer, 137 Mass., 392.

In Ex parte Milligan, 4 Wall., 121, it was said: "Every trial involves the exercise of judicial power."

That the public and press should be entitled to hear what is not yet evidence and what may never become evidence, before the court which is to try the case hears it, is an unprecedented and unreasonable proposition. The contention that judicial proceedings shall be held with open doors is not under dispute. The proposition that the taking of depositions by an examiner, who is merely a ministerial officer, is subject to the same rule is in our opinion manifestly erroneous.

To justify a departure from the general practice and from the requirements of the natural meaning of the equity rules of the Supreme Court, which have the force of statute, it is necessary for the United States, if unable to produce authority, to show some reasons for its position. It asserts merely the right of the public to hear testimony. The public will have that right when testimony is offered. The public interests are fully preserved from the fact that the trial in the present case must be conducted with open doors.

The defendants claim that the court is bound, as a matter of positive law, by the sixty-seventh and sixty-ninth equity rules, and that these rules mean that no one else shall be present at the taking of the testimony except the parties mentioned in the rules; that if these rules do not fully cover the question equity rule 90 applies. The contention that upon a proper construction of equity rule 67 the examination is to be private is directly supported by the decision of Jessel, master of the rolls, In re Western of Canada Oil, Lands and Works Company, L. R. 6 Chan. Div., page 109.

"The place where the examiner sits is not a public court, but a mere office. That was so before the judicature acts, and those acts, so far as I know, have made no change in his position, and his office remains a private office to this day.

"The 31st section of the act 15 & 16 Vict. c. 86, which is still in force for this purpose, provides that 'all witnesses to be examined by or before one of the examiners of the court, or by or
1373 before an examiner to be specially appointed by the court, * * * and such examination shall take place in the pres-

ence of the parties, their counsel, solicitors, or agents.' That must mean in the presence of the parties, their counsel, solicitors, or agents exclusively. It can not mean that the parties, their counsel, solicitors, or agents must be present. It can only mean that the examination shall take place in their presence if they choose to attend. Subject to this, it is a private examination.

"In my opinion, the public have no right whatever to go into the examiner's office, and the examiner has no discretion as to admitting them."

The language construed by the learned judge was substantially that of rule 67.

We may further notice that rule 13 of the Circuit Court contained the form of commission upon interrogatories at law or in equity. Among other things it is provided:

"You will not, without the consent of the parties in writing, permit any person except yourself to attend at the taking of any deposition, or to communicate with any witness, whilst giving his deposition, in relation to the subject matter thereof; except that you may permit to be present such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing; and you will take such deposition in a place separate and apart from all other persons."

Certainly this is inconsistent with the existence of any supposed rule that the public has a right to hear what is being said, as distinguished from an opportunity to hear it read at the trial. In conclusion we may say: Is it not time enough for the public to know what the testimony is when the court knows what it is? Is it not enough for the public to receive testimony in the form in which the court must receive it?

The examiner will not, without the consent of both parties, allow the attendance of person's other than those mentioned in rule 67.

Judge Putnam sat at the hearing of this matter by this court assembled under the statute, but as he had expressed an opinion when the question involved was brought before him as a single judge, he deemed it proper to withdraw from expressing any further opinion.

1374 *Docket entry of March 18, 1913.*

March 18, 1913. PUTNAM, DODGE, and BROWN, JJ.: Dodge, J., sitting under the statute in place of Colt, J., who has resigned. Order striking out order appointing Charles K. Darling special examiner.

Motion and affidavits of United States to try the cause to be filed by Thursday, March 20, 1913. Hearing continued to Wednesday, March 26, 1913, at 10 a. m.

1375. *Motion for appointment of special master.*

[Filed March 20, 1913.]

Now comes the United States of America, by William S. Gregg, special assistant to the Attorney General, and move that an order be entered herein requiring that the testimony in the above-entitled cause be taken before a special master, for the reasons appearing in the annexed affidavit.

WM. S. GREGG,
Of Counsel for Petitioner.

Affidavit in support of motion.

William S. Gregg deposes and says that he is a special assistant to the Attorney General, and of counsel for the petitioner in the above-entitled cause;

That on December 12, 1911, the petition in the above-entitled proceeding was filed; answers and replications thereto have been duly filed, and the cause is at issue;

That on May 20, 1912, a certificate of the Attorney General was filed, in accordance with the provisions of the act of Congress approved February 11, 1903, known as the "expediting act," as amended by the act of Congress of June 25, 1910, requesting that the case be heard before not less than three judges, as required by said acts, and that on May 28, 1912, an order was entered by the court designating three judges to sit as a special tribunal;

That this proceeding will require the examination of a large number of witnesses for the petitioner alone (the exact number your affiant is unable to state at this time); it is possible that among the witnesses for the petitioner approximately eighty could be examined before the court, and that the testimony of the other witnesses, approximately thirty, would have to be taken by deposition, due to the fact that they live out of this district and more than one
1376 hundred miles from the place of holding court, namely, in the States of New York, New Jersey, Pennsylvania, Ohio, Wisconsin, Illinois, and Missouri;

That it will be necessary to cause the production and examination of a large number of voluminous contracts, books, accounts, and other documents;

That the present case is an exception in equity proceedings under the Sherman Anti-Trust Act, in that there is involved thousands of letters patent in connection with which it may become necessary to produce expert testimony, which alone may occupy many weeks;

That equity proceedings brought under the Sherman Anti-Trust Act, wherein the United States is complainant, and wherein the Attorney General has filed a certificate, as authorized by said expediting act, and wherein a court of at least three judges has been constituted, are different from other equity proceedings in that the time of three judges instead of one will be occupied in hearing testimony;

That the interests of all of the parties to this proceeding would appear to be amply protected and the time of the court saved by a reference of the cause to a special master to take all of the testimony and report to the court.

WM. S. GREGG.

1377 Personally appeared before me William S. Gregg, who makes oath that the matters recited in the foregoing affidavit are true to the best of his information and belief.

Sworn to and subscribed before me this twentieth day of March, 1913.

[SEAL.] CHARLES K. DARLING,
Clerk U. S. District Court.

1378 *Application for leave to withdraw motion for appointment of special master.*

[Filed March 26, 1913.]

Now come the United States of America, by William S. Gregg, special assistant to the Attorney General, and requests leave of the court to withdraw the motion and affidavit filed with the clerk on March 20th, 1913, for the appointment of a special master to take testimony in the above-entitled cause.

WM. S. GREGG,
Of Counsel for Petitioner.

March 26, 1913.

PUTNAM, DODGE & BROWN, JJ. Ordered, there being no objection, the application of the United States for leave to withdraw its motion for appointment of special master is allowed without prejudice.

Attest:

CHARLES K. DARLING, *Clerk.*

1379 *Docket entry of March 26, 1913.*

March 26, 1913. PUTNAM, DODGE & BROWN, JJ. Ordered, there being no objection, the application of the United States for leave to withdraw its motion for appointment of special master is allowed without prejudice.

1380 *Petitioner's motion that the cause be set down for hearing.*

[Filed May 13, 1913.]

And now comes the United States of America, petitioner, and moves that the above-entitled cause be set down for hearing by the court for some date on or about the twenty-seventh day of May, current, and thereafter proceeded with continuously, or substantially so, upon regular court days until the taking of testimony by all parties shall have been completed.

ASA P. FRENCH,
United States Attorney.
WM. S. GREGG,
Special Assistant to the Attorney General.

1381 *Petitioner's alternate motion that the cause be set down for hearing before an examiner.*

[Filed May 13, 1913.]

And now comes the United States of America, petitioner, and without waiving its prior motion, filed herewith, moves, in the event that said prior motion is not allowed, that the above-entitled cause be referred to an examiner, under equity rule 47, to take the testimony therein beginning on or about the twenty-seventh day of May, current, and that the taking of said testimony be thereafter proceeded with continuously, or substantially so, until the taking of the testimony by all parties shall have been completed.

In support of this motion, the petitioner files the affidavit hereto annexed.

ASA P. FRENCH,
United States Attorney.
WM. S. GREGG,
Special Assistant to the Attorney General.

Affidavit in support of motion.

William S. Gregg deposes and says that he is a special assistant to the Attorney General and of counsel for the petitioner in the above-entitled cause:

That on December 12, 1911, the petition in the above-entitled proceeding was filed; answers and replications thereto have been duly filed, and the cause is at issue;

That on May 20, 1912, a certificate of the Attorney General was filed, in accordance with the provisions of the act of Congress approved February 11, 1903, known as the "expediting act," as amended by the act of Congress of June 25, 1910, requesting that

the case be heard before not less than three judges, as required
1382 by said acts, and that, on May 28, 1912, an order was entered by the court designating three judges to sit as a special tribunal:

That this proceeding will require the examination of a large number of witnesses for the petitioner alone (the exact number your affiant is unable to state at this time); it is possible that among the witnesses for the petitioner, approximately eighty, could be examined before the court, and that the testimony of the other witnesses, approximately thirty, would have to be taken by deposition, due to the fact that they live out of this district, and more than one hundred miles from the place of holding court, namely, in the States of New York, New Jersey, Pennsylvania, Ohio, Wisconsin, Illinois, and Missouri;

That it will be necessary to cause the production and examination of a large number of voluminous contracts, books, accounts, and other documents:

That the present case is an exception in equity proceedings under the Sherman Anti-Trust Act, in that there is involved thousands of letters patent in connection with which it may become necessary to produce expert testimony which alone may occupy many weeks;

That equity proceedings brought under the Sherman Anti-Trust Act, wherein the United States is complainant, and wherein the Attorney General has filed a certificate, as authorized by said expediting act, and wherein a court of at least three judges has been constituted, are different from other equity proceedings, in that the time of three judges instead of one will be occupied in
1383 hearing testimony;

That the interests of all the parties to this proceeding would appear to be amply protected, and the time of the court saved, by a reference of the cause to an examiner to take all of the testimony and report to the court.

WM. S. GREGG.

Personally appeared before me William S. Gregg, who makes oath that the matters recited in the foregoing affidavit are true to the best of his information and belief.

Sworn to and subscribed before me, this thirteenth day of May, 1913.

[SEAL.] JOHN E. GILMAN, Jr.,
Deputy Clerk, U. S. District Court, Dist. of Mass.

1384 *Docket entry of May 13, 1913.*

May 13, 1913. PUTNAM, DODGE & BROWN, JJ.: On motion for hearing of case in open court, ordered that case be assigned for hearing on Tuesday, May 20, 1913, at 10 a. m.

1385 *Defendants' motion for a bill of particulars.*

[Filed May 28, 1913.]

Now comes the several defendants and severally set forth that section six of said petition, headed "Other unfair and monopolistic acts of defendants," is couched in such general language and contains such vague and insufficient statements as to afford no information to the court and to these defendants of any specific acts complained of; that under rule 20 of the new equity rules of 1912, adopted by the Supreme Court of the United States, it is provided that further and better particulars of any matter stated in any pleading may be ordered by the court upon such terms as to costs or otherwise as may be just.

Wherefore, in view of the vagueness, insufficiency, generality, and indefiniteness of said section six of said bill of complaint, set forth at page 26 thereof, these defendants severally move that the United States be required to file forthwith such further and better particulars of the matters stated in said section six shall apprise the court of the claim made by the United States, and so that these defendants may know what things they have to meet in regard thereto, and with what they are charged.

CHARLES F. CHOATE, Jr.,
For Defendants.

1386 *Petitioner's response to defendants' motion for a bill of particulars, under Section VI of the petition, in the above-entitled cause.*

[Filed June 25, 1913.]

Responding to the motion of defendants for a bill of particulars, and the order of the court thereon, under Section VI of the plaintiff's petition, the following statement is filed in amplification of said section:

I.—Misrepresentation and threats to induce customers of competitors to abandon competing machinery.

a. The defendants or their agents have threatened to and have actually removed their leased machinery from factories where the machinery of competitors was being operated, the parties against whom said threats were made, when and where made, and the kinds of machines removed, and the kinds of competing machines which had been obtained, and from whom obtained, being as follows:

(1) Peter Tessier & Company, in or about March, 1904, in Haverhill, Massachusetts; machines removed being slugging machines, Goodyear welt and turn shoe machines, Grip slugging machines, Universal slugging machines, knife grinder, Goodyear turn channelers, and a Goodyear molding machine; the independent machine operated by Tessier & Company being a Duplessis turn sewing machine.

(2) Ernest Bottomley & Company, in or about January, 1904, at Haverhill, Massachusetts; machines removed being single head taper nail tacking machine, loose nailing machine, grip slugging machine, McKay knife grinder, American lightning nailing machine, McKay heel trimming and randing machine, McKay rotary grinder, Planet sole rounder; and the independent machine operated by Bottomley & Company being a Duplessis welt and turn machine.

b. The defendants or their agents threatened to remove, under the terms of their leases, their machines which were being operated by the following parties:

1387 (1) Mark J. Worthley, of Lynn, Massachusetts; Joseph Caunt, of Lynn, Massachusetts; Thomas G. Plant Company, of Boston, Massachusetts; A. E. Little Company, of Lynn, Massachusetts, and A. Garside & Sons, of New York City, because said individuals and firms were each operating in their factories or had obtained machines from the Standard Shoe Machinery Company. The petitioner is not informed as to the exact dates said threats were made, but is advised that they occurred in 1900 or 1901.

(2) In 1902 or shortly prior thereto, C. B. Lancaster Shoe Company, of Keene, New Hampshire, installed on trial in its factory a tackless lasting machine manufactured by the Tackless Shoe Machinery Company, whereupon the defendant United Shoe Machinery Company gave notice that if such machine was not returned forthwith, it would remove all of its machinery with which the factory of said Lancaster Shoe Company was almost entirely equipped, and as a result thereof said tackless lasting machine was returned and not purchased or leased.

(3) About the same time, Nutt & Pratt, of Natick, Massachusetts, whose factory was equipped with machinery leased from the United Shoe Machinery Company, also installed on trial one of said tackless lasting machines, but returned the same in consequence of a notice given by the United Shoe Machinery Company of like character to that it gave to C. B. Lancaster Shoe Company.

c. The defendants threatened to take back their machines under the terms of their leases and thereby force manufacturers to remove competing machines which had already been installed in the following instances:

(1) They so threatened T. D. Barry Shoe Company at Brockton, Massachusetts, in or about the spring or summer of 1900, and brought a proceeding to remove from said company's factory welting, stitching, heeling, lasting, slugging, insole channeling, and other machines, and thus compelled said company to remove a system of machines of like character, except slugging and channeling machines, which Barry & Company had obtained from the Standard Shoe Machinery Company.

(2) They so threatened Curtis & Jones, of Reading, Penn-
1388 sylvania, in or about the year 1903, and thus caused them to remove from their factory a full or nearly full line of machines which had been leased or purchased from the Duplessis Shoe Machinery Company.

d. Hilliard & Tabor, of Haverhill, Massachusetts, had installed a line of shoe machinery belonging to the United Shoe Machinery Company, and were operating the same. Early in 1911 said company installed a turn sewing machine manufactured by the Haverhill Shoe Machinery Company. Shortly thereafter, defendant Winslow, acting for the United Shoe Machinery Company, pointed out to Hilliard & Tabor that this machine was being operated in violation of the Shoe Machinery Company's leases, and threatened to change the terms of said leases and make them more onerous if said machines should be purchased and permanently installed; in consequence of which Hilliard & Tabor refused to purchase said machines.

e. In or about the year 1909 Harsh-Edmonds Shoe Company, of Milwaukee, Wisconsin, desired to lease one or more clicking machines, but on account of the burdensome conditions of the leases of the United Shoe Machinery Company they made an effort to obtain them from other parties. Shortly thereafter Mr. Harsh, while in Boston, was sent for by Mr. Willson, general manager of the United Shoe Machinery Company, and was warned and threatened by him with reference to his making further effort to procure such machines elsewhere, and was caused thereby to take clicking machines from the United Shoe Machinery Company.

f. Witherell & Dobbins, of Haverhill, Massachusetts, were engaged in the manufacture of turn shoes and were contemplating entering upon the manufacture of welt shoes, and in or about the spring of 1911 they were threatened by the United Shoe Machinery Company or its agents that if they continued to operate machines of competitors in the manufacture of turn shoes, they would exact from said Witherell & Dobbins installation charges on machines used in the manufacture of welt shoes, which charges were exorbitant in comparison with those rendered to manufacturers not operating competing machines.

1389 g. About the same time George A. Learned, of Newburyport, Massachusetts, was also engaged in the manufacture of turn shoes, and was contemplating entering upon the manufacture of welt shoes, and a threat of like character was made to said company by defendant shoe machinery company or its agents.

h. About June, 1911, Harry H. Wentworth, of Haverhill, Massachusetts, who was engaged in the manufacture of shoes, determined to install a heeling machine or machines manufactured by the Haverhill Shoe Machinery Company, but he was induced not to install said machines by representations on the part of the United Shoe Machinery Company or its agents that if he should do so said United Shoe Machinery Company would increase its installation charges upon future orders for machines, but that no additional charges would be made if orders were not placed with its competitors.

i. In certain conferences held in St. Louis in February, 1911, and in Boston in May, 1911, between Sidney W. Winslow, president of the United Shoe Machinery Company, and Jackson Johnson, Milton S. Florsheim, Frank C. Rand, Emanuel F. Selz, and other shoe manufacturers located in the Central West, said Winslow threatened said manufacturers that the United Shoe Machinery Company would enter upon the shoe manufacturing business, this threat being made in connection with efforts made by said manufacturers to procure a modification of the provisions in the United Shoe Machinery leases.

II.—Threats to use financial resources and power of combination to ruin competitors.

a. In 1900 and previous thereto the Standard Shoe Machinery Company was engaged in the manufacture of shoe machinery, and was endeavoring to perfect and place upon the market, in competition with the United Shoe Machinery Company, a full line of shoe machinery. In or about the spring of said year William Barbour, a director of, and acting power of, the United Shoe Machinery Company, arranged for a conference with James N. Darrah, an officer of said Standard Shoe Machinery Company, the object of said
1390 conference being to negotiate the purchase by the United Shoe Machinery Company of the properties and stock of said Standard Company. Said conference was had at the office of John R. Dos Passos. In the conference then held said Barbour said in substance the following:

"Well, you are making a big mistake because we always try to be nice to people—we offer to buy them at first and then we crush. You cannot do anything, because we control the banking influences both in New York and Boston, and you would not be able to get any money. You won't put in your machines because we have the shoe

manufacturers in a state of terror. I own a million dollars of that stock, and we can't afford to have any competition. My investment is liable to be jeopardized and we can't afford to have any competition against the United Shoe Machinery Company. We have the field and we are going to retain that field."

Thereafter and after the Standard Shoe Machinery Company had suspended operations, said Darrah, in 1905, had a talk with said Barbour, in which he, Darrah, remarked that he had thought of going back into the shoe machinery business, to which Barbour replied in substance:

"You would make a big mistake because you would never get in. We will never let you in or anyone else. You will never have a chance to get in. You will never be able to place your machinery with shoe manufacturers. You can't find any customers."

b. In 1908, and prior thereto, Richard H. Long, of South Framingham, Massachusetts, was engaged to some extent in the manufacture and sale of shoe machinery in competition with the United Shoe Machinery Company, and was endeavoring to increase his business along that line. In or about said year, for the purpose of enabling him to prosecute said business more successfully, he endeavored to arrange for a line of credit with the Chapin National Bank, of Springfield, Massachusetts, but was prevented from doing so by and through the influence of the United Shoe Machinery Company. About the same time he was offered a credit of $50,000 by the New England National Bank, but was subsequently refused the same through the influences brought to bear by the defendants.

1391 c. About 1908 one Bayley, an officer of high rank in the United Shoe Machinery Company, stated to J. S. Holt, who was then endeavoring to manufacture and sell shoe machinery in competition with the United Shoe Machinery Company, and for the purpose of intimidating said Holt, that the said Richard H. Long would be ruined and driven from business by the United Shoe Machinery Company unless he ceased trying to compete with this company, and that the same fate would befall any other who tried to enter the shoe machinery industry, and that said company would make every effort to ruin Long by destroying his credit with the banks, pointing out that the United Shoe Machinery Company controlled the First National Bank of Boston, one of the largest and most powerful financial institutions in New England, and possessed such strong banking connections that it would be able to prevent Long from obtaining the necessary capital to continue operations.

d. In 1904 and previous thereto Harry E. Cilley, of Rindge, New Hampshire, was engaged in making shoe machinery, principally Judd

leveling machines. In 1901 negotiations were being had between said Cilley and the United Shoe Machinery Company, through E. P. Hurd. During the negotiations Cilley was asked if he would accept $30,000, which was declined. Hurd then said in substance that Cilley could not do any business except by the sufferance of the United Shoe Machinery Company and that he was slow-witted if he did not appreciate it; that the United Shoe Machinery Company controlled all the manufacture of welt shoes and intended to control the manufacture of McKay sewed shoes, and that the control of the upper stitching process might be acquired; that the United Shoe Machinery Company did not care for either the common law or the Sherman law, that they could retain attorneys of reputation, and their money practically could control any suit started against them, and further that at the formation of the United Shoe Machinery Company constituent companies had its machines in factories, the removal of which by the United Shoe Machinery Company at that time would have put a shoe manufacturer out of business, since
1392 which time the shoe manufacturers, through threats of litigation and possible attacks upon credits, have been at the mercy of the combination.

e. Tower Brothers have been engaged at Hudson, Massachusetts, in manufacturing shoe machinery and placing the same upon the market in competition with the United Shoe Machinery Company. Said company's business was greatly injured by their employees being taken away to work in the factory of the United Shoe Machinery Company, they being induced to do so by agents of said company. On or about 1900 one Timothy Bresnahan, acting as agent for the United Shoe Machinery Company, under special authority given by said company, endeavored to purchase the property and business of said Tower Brothers, and made a proposition for the same, which was refused. Thereupon Bresnahan, acting for said defendant company, threatened to drive Tower Brothers from business by quoting such ruinously low prices that they could not possibly compete, at the same time informing said Tower Brothers that the object of the Shoe Machinery Company was to secure complete control of the edge-trimming or edge-cutting machine business.

f. Charles H. Morse, of Brookline, Massachusetts, was formerly engaged in the business of shoe machinery manufacture. In 1903, while said Morse was endeavoring to market the machine known to the trade as the "Frechette" pegging machine and a slugging machine which competed with the United Shoe Machinery Company machines for doing similar work, President Winslow requested said Morse to call at his office, at which time Winslow stated in substance: "You don't suppose we are going to let you continue placing that machine upon the market."

g. George H. Clark, of Winthrop, Massachusetts, an inventor of machines used in the manufacture of shoes, had invented a method of molding or lasting a shoe and stitching the same on the last on which it was molded, the edge being trimmed at the same time at a suitable distance from the edge of the last to enable the outer sole to be attached thereto.

Clark endeavored to introduce this method of manufactur-
1393 ing a molded shoe into various shoe factories, and particularly in the factory of E. B. Richardson, Reading, Massachusetts.

Clark visited the offices of the United Shoe Machinery Company in this connection about 1910 and endeavored to procure by purchase, lease, or rental a Goodyear rapid lock-stitch machine for use in the Richardson factory. Edward P. Hurd, a director and member of the executive committee and assistant treasurer of the United Shoe Machinery Company, at that time told Clark in substance:

"Our policy is to stick the knife in deep to the hilt in the case of anyone interfering with our system, and surely your method does interfere. We will never let you have a machine or have one used in any factory where you or your method may be found, for you to experiment with."

h. Irving A. Hadley and Herbert L. Kimball, doing business under the firm name of Kimball & Hadley, were engaged at Lynn, Massachusetts, in the manufacture of needles, awls, and drivers, and placing the same among shoe manufacturers in competition with the United Shoe Machinery Company.

The United Shoe Machinery Company, through its representatives, notified the shoe manufacturers that if they purchased and used needles and awls from said Kimball & Hadley, the United Company would withdraw its machines from their factories. And in a meeting with Charles W. Martin, assistant to Manager C. H. Bailey, of the United Shoe Machinery Company needle department, about 1903, Hadley was told in substance that the United Company would have his business sooner or later, and that he had better go in and see Mr. Bailey. Hadley afterwards visited said Bailey, as a result of Martin's suggestion, and was told by the latter that if necessary the United Company could give its needles away, in order to destroy the business of Kimball. In the fear that their business would be absolutely destroyed, Kimball & Hadley sold out to the United Shoe Machinery Company.

i. About 1904 the defendants entered into negotiations with Samuel A. Krewson, of Pensauken, New Jersey, an inventor of shoe machinery, with a view to purchasing his inventions. During
1394 a conference with Mr. E. L. Hurd, of the United Company Krewson was told in substance that he owned nothing but what the United Company could make—referring particularly to

Krewson's scouring and fudge wheeler machines. Krewson pointed out to Mr. Hurd that the United Company at that time had nothing like his device, and if it did put one on the market it would be equal to a duplication of his machines, to which Mr. Hurd replied in substance that the United Company could make scouring wheels and put them out by the thousand cheaper than Krewson could possibly do so. Krewson admitted that the United Company could do this, of course, but that it would lose money in so doing, to which Mr. Hurd replied in substance: "We do it to drive little fellows like you out of business." Mr. Hurd also stated to Krewson in substance that "You had better get out of the shoe machinery business," to which Krewson replied: "Would you have me breaking stone?" To which Hurd answered: "Well, I would do something else." At the same time Mr. Hurd remarked: "If we did buy anything, you would pop up again with something else," to which Krewson replied: "Wouldn't I have a right to pop up again?" Mr. Hurd replied: "That is just the trouble; we would have to buy you out again."

III.—Threats to prevent prospective competitors from entering business.

Specifications under this head are embraced in those given under Section II.

IV.—Acquisition of letters patent for valuable inventions—Withheld for long periods—To the detriment of manufacturers and the public.

a. From time to time, as patents have been issued upon various devices used in the manufacture of shoes and various attachments to shoe machinery, the defendants have systematically, for the purpose of preventing others from making a practical use of said patents in the manufacture of machines which would be sold or leased in competition with their machines, and for the purpose of
1395 further monopolizing the shoe machinery business to themselves, acquired said patents by purchase or otherwise, and after the acquisition, with but few exceptions, have suppressed the same, or have failed to make practical use thereof.

b. The defendants have, by suits and threats of suits, for alleged infringement of patents, used and employed patents covering mere details of construction, to prevent the manufacture, use, and sale of unpatented machines.

V.—Grant of rebates to manufacturers to effect exclusive use of machinery.

a. The defendants have granted, and are now granting, to exclusive users of their leased machinery and to such other shoe manu-

facturers upon such special terms as may be considered expedient, rebates of amounts equal to the sums paid by them, respectively, as royalty on Gem flexible insole machines of defendants during the period for which such rebates are made.

b. The defendants have granted a rebate of not less than 15 per cent on account of royalties received from their lessees of Goodyear welters and stitchers in the United States, and one of not less than 10 per cent on account of royalties from the use of Goodyear turn sewing machines, such rebate in each instance being received from a fund created by the investment by defendants each year in the common stock of the United Shoe Machinery Corporation, for three years, from January 1, 1910, to January 1, 1913, at the end of which period the said stock was to have been distributed among said lessees of defendants.

c. The defendants, on the other hand, have penalized, and have threatened to penalize, shoe manufacturers operating competing machinery by withdrawing the above mentioned rebates.

VI.—Purchase of business of competitors at exorbitant prices to eliminate competition.

a. The defendants have purchased the businesses of competitors and prospective competitors to eliminate competition, paying therefor, in many instances, exorbitant prices.

1396 VII.—Other unlawful acts.

a. The defendants have been instrumental in endeavoring to organize strikes and other labor disputes in factories of shoe manufacturers wherein machinery of competitors was also operated.

(1) In or about May, 1910, disaffection arose among the employees in the shoe machinery factory of Thomas G. Plant, then in operation at Boston, Massachusetts. Through an employee of the United Shoe Machinery Company conferences with reference to said labor troubles in Plant's factory were held between one Frank Morrison, Abraham Sochat, and Charles G. Ross, representing Plant's employees, and Charles H. Willson, then general manager of the United Shoe Machinery Company. In one of such conferences in or about June, 1910, said Willson assured Morrison and others that if they would form an organization among the employees of the Plant factory for the purpose of causing a strike therein, all expenses would be paid by the United Shoe Machinery Company, and that the leaders in the movement would be paid handsomely. Relying upon said representation, Morrison and others began to form such organization in accordance with instructions from Willson, and through their efforts about

three hundred operatives were brought within the union. But Plant, becoming suspicious, employed detectives to watch the movements of Morrison and his associates, and a strike in his factory was prevented. Said Morrison and his associates expended a large sum of money promoting said organization.

b. The defendants have taken into their employ officers and employees of competitors for the purpose of injuring their business, and have attempted to induce, hire, or bribe, and have induced, hired, and bribed, individuals to spy upon or betray the secrets of competitors in the following instances, to wit:

(1) In or about 1900 Charles H. Willson, representing the United Shoe Machinery Company, induced Solomon N. Cutter, who was under contract with said company, to go into the employ of the Standard Shoe Machinery Company, a corporation whose headquarters were at Boston, Massachusetts, the object of said
1397 Willson being to thus covertly obtain information as to the financial condition of said company and the state of its business, and afterwards endeavored to obtain from said Cutter information which said Cutter had received while in the employ of said Standard Company.

(2) The Harlow Shoe Finishing Machine Company is a corporation which has been for some time engaged in manufacturing especially the Harlow heel-burnishing machine, which competes with the Xpedite heel burnisher. In or about 1911, George H. Harlow, who was the president and a minority stockholder of said Harlow Shoe Finishing Machine Company—the person principally interested therein being E. E. Bartlett—was taken into the employ of the United Shoe Machinery.

(3) On or about June, 1910, one Richards and one Raymond, agents of the United Shoe Machinery Company at Lynn, Massachusetts, through Charles G. Ross and Abraham Sochat, employees at the Plant shoe factory at Boston, Massachusetts, induced a former expert laster at the Plant shoe factory to go to the P. J. Harney Shoe Company factory at Lynn, Massachusetts, where, under their supervision and in accordance with instructions from Charles H. Willson, general manager of the United Shoe Machinery Company, the said workman demonstrated a lasting machine invention operated in the Plant factory, using the lasting machine of the United Shoe Machinery Company as a model to illustrate the essential differences in operation between the said two machines.

(4) In 1910 and 1911 the Reece Buttonhole Machine Company, whose head office was in Boston, Massachusetts, was engaged in the manufacture of buttonhole machinery, and had in its employ Bernard T. Leveque, an inventor, and Charles M. Brown, a foreman. The United Shoe Machinery Company was then contemplating

entering upon the manufacture of buttonhole machinery and was experimenting for that purpose, and in order to injure the business of said Reece Buttonhole Machine Company it induced said Leveque and Brown to enter into its employ.

(5) In 1905 Charles P. Stanbon, doing business under the name of C. P. Stanbon & Company, was engaged at Lynn, Massachusetts, in manufacturing and selling stockfitting machinery in
1398 competition with the United Shoe Machinery Company, and said company was endeavoring to force said Stanbon to sell out his entire business. For the pørpose of accomplishing this object, the said United Shoe Machinery Company offered said Stanbon's employees higher wages and thereby induced one Horace Thompson, a special stock fitter, and other important employees of Stanbon to leave him and accept employment from said company.

c. The defendants have threatened to duplicate, and in numerous instances have duplicated, the inventions, patterns, and designs, patented and unpatented, of others and have used the same to their own advantage without proper payment therefor.

(1) In 1903 and previous thereto the Tripp Giant Leveler Compaay was engaged in the manufacture of a leveling machine. Said Leveler Company was controlled and owned by Charles H. Johnson and Maurice V. Bresnahan. About January of said year said Johnson and Bresnahan received a request from the United Shoe Machinery Company to enter into negotiations looking to the asquisition by said company of the Tripp Giant Leveler Company and another concern in which Bresnahan had an interest. At the first interview S. W. Winslow, president of said company, submitted a proposition to the effect that the business would be taken over at an appraised value for the tools and stock on hand, and that in lieu of payment for the Leveler Company's patents a commission was to be paid by the United Shoe Machinery Company on all Tripp Giant Leveler Company machines thereafter manufactured and sold, and a proposition was made embracing an offer for employment with the United Shoe Machinery Company for a period of ten years. When the contract was thereafter prepared and submitted, it materially differed from his proposition, and said Johnson refused to execute the same, and Bresnahan also refused. Thereupon Mr. Winslow said to Johnson in substance: "Johnson, you had better sign that contract. We are going to have your business any way." About six months thereafter the United Shoe Machinery Company began the manufacture of machines which were practically duplicates of the machines manufactured by the Tripp Giant Leveler Company.
1399 On account of the tremendous expense of patent litigation, it was considered inadvisable to institute legal proceedings to

prohibit the Shoe Machinery Company from further manufacturing same.

(2) Frank L. Harmon, of Beverly, Massachusetts, was an inventor of patent heeling machines, tacking and nailing machines, sewing machines, skiving and fulling machines, and shoe machinery of other kinds. In 1905 S. W. Winslow, president of the United Shoe Machinery Company, was endeavoring to purchase from said Harmon his patents on skiving and fulling machines, and in an interview said Winslow told Harmon that he would see to it that Harmon did not get any more money to work with. Winslow also said that he did not have to buy Harmon's machine; that he would rather have three machines do the work than one, because they would have more machines and more parts to make. Winslow further said that he could have Harmon's machines if he cared for them, and that Harmon could not prevent it, and said that Harmon could not prevent it, and said that Harmon was a fool not to have studied the power of money.

After Harmon had obtained a patent on a die block and for several years before same was assigned to the United Shoe Machinery Company said company manufactured and leased machines infringing said patent without any right whatever to do so, and without giving Harmon any compensation therefor.

One H. O. Woodbury furnished said Harmon money for experimentation, and while so engaged said Harmon invented and constructed a skiving machine. Said Woodbury negotiated with C. H. Willson, manager of the United Shoe Machine Company, and Willson said that if the patent was assigned to the company and the machine worked as represented, the company would pay for it a substantial sum. Trusting this representation, Woodbury assigned without present consideration, said patent, relying upon the oral understanding as stated. The company bought and tested said machine, which worked perfectly, but the company thereafter refused to pay any consideration for the patent.

(3) One Euclid I. LaChapelle in 1906 invented an appliance for holding uppers to soles during the sewing operation. Some
1400 time thereafter LaChapelle invented an improvement on the pulling-over machine, and also invented a machine for leveling the bottom of shoes, a welt guide, and many other improvements on other machines used in the manufacture of shoes. The United Shoe Machinery Company took said LaChapelle into its employ, upon representation that it would pay to him a reasonable consideration for said inventions when they should be developed by experimentation but said LaChapelle was subsequently purposely discharged from its employ, and many of said improvements have been perfected and

placed in operation, without any adequate consideration from the United Shoe Machinery Company.

(4) In or about November, 1903, one Nathaniel Sparks invented a heel compressing machine and assigned his invention to one William J. Young, but the patent was applied for in the name of said Sparks. Thereafter the United Shoe Machinery Company induced said Sparks to make an affidavit and file same at the Patent Office, denying that he had ever invented such machine. Subsequently the United Shoe Machinery Company began making machines under said invention, and said Young has never been able to realize any value therefrom.

(5) T. J. Edwards was engaged in the business of cutting stamps to be used in stamping shoes. In 1910 he was requested by the United Shoe Machinery Company to compile a catalogue of his stamp cuts, so that orders might be taken from said company by those desiring stamps. Understanding that the orders would be placed with himself, he compiled the catalogue, but received practically no orders through said company. Early in 1911 Edwards ascertained that the United Shoe Machinery Company had issued a catalogue of designs and distributed the same to all shoe manufacturers, in which it had included those which had been furnished by Edwards previously. The issuance of this catalogue practically ruined Edwards's business.

(6) The Fortuna Machine Company manufactures a skiving machine known as the Fortuna skiving machine. The United Shoe Machinery Company has for some years past been manufacturing a skiving machine which closely resembles the one manufactured
1401 by the Fortuna Company, and which it represents to the shoe manufacturers to be a Fortuna machine, and while it expresses willingness to said manufacturers to instal the same if they so desire, it discourages them from doing so, pretending that the machine is an inferior one. This is done in order to discredit the machine manufactured by the Fortuna Machine Company.

(7) About 1904 or 1905 one George E. Rollins invented a welt-grooving and champing machine and sold out two-thirds interest therein to Charles C. Merritt, of Brockton, and some machines manufactured thereafter were placed upon the market. After it was demonstrated that said machine was a success, the United Shoe Machinery Company, without any legal right whatever, began putting out a similar machine, which clearly infringed Rollins's patent, and placed same upon the market in competition with Rollins's machine, and destroyed the value thereof. Said Rollins has been deterred from litigation on account of the expense of same.

(8) In the spring of 1900 one A. McDowell invented a spring heel shaver, and looking to a purchase of this invention the United

Shoe Machinery Company carried on for a time negotiations with said McDowell. Thereafter said company informed McDowell that it had a machine for a like purpose of its own, which machine was in fact an infringement of McDowell's invention. Said McDowell also invented a heel seat cutter for trimming the heel seats of shoes on heel-shaving machines, upon which he obtained a patent in 1897, and he thereafter also procured a patent upon an adjustable independent background for heel seat cutters on shaving machines. The United Shoe Machinery Company has purposely produced machines embodying the patented features of each of the aforesaid patents, and thereby destroyed the value of the same, well knowing that said McDowell could not afford the expense of litigation against it.

d. The defendants have exacted royalties from various lessees among shoe manufacturers for work performed on machinery owned by such shoe manufacturers or furnished by competitors of defendants.

(1) On November 1, 1911, the defendants rendered a bill to
1402 Mr. Charles L. Clifford, who was engaged in the manufacture of children's turn shoes at Newton, New Hampshire, for 9,839 pairs of children's turns, sewed on a Fox (Haverhill) turn-sewing machine, at one cent per pair—or a total of $98.39, with a discount of fifty per cent (50%) if paid before November 15, 1911.

(2) About 1903 or 1904 Fred J. Thompson, of Haverhill, Massachusetts, shoe manufacturer, was using two stitching machines of the Duplessis Machinery Company. Later a line of machinery of the United Shoe Machinery Company was installed and Thompson was obliged to pay royalties to the United Company for all shoes manufactured by the Duplessis machinery.

e. The defendants have wrongfully exacted return charges from shoe manufacturers on leased machinery in instances where such charges did not properly apply.

f. The defendants have arbitrarily increased the installation, return, and other charges on machinery operated by shoe manufacture's who also operate machinery of competitors.

(1) N. D. Dodge Shoe Company, of Newburyport, Massachusetts, had greatly improved their work by the aid of the machines of the Haverhill Shoe Machinery Company, but were forced to discontinue their use when they went to the United Company for a welt line. The company would not put in the line unless they paid what would be a fair price for the machines when installed, and yet which gave them no equity in the machines, and they must then pay the same royalties as others who made no initial payment.

The United Company required them not only to discontinue the use of the sewing machines, but the channeling machines also.

g. The defendants have offered or granted special terms and prices to shoe manufacturers on machinery, parts, and supplies, at times below cost, to induce them to withdraw their business from competitors.

(1) About 1900, E. P. Reed Company, of Rochester, New York, were using machines of the Standard Shoe Machinery Company. The defendants offered to install their machines free of charge if the Reed Company would discontinue the use of Standard machines.

1403 h. The defendants have refused or delayed unnecessarily in furnishing machinery, parts, or supplies to shoe manufacturers also operating machinery furnished by competitors or owned by said shoe manufacturers.

i. The defendants have threatened to remove their leased machinery from factories wherein supplies purchased from competitors have been used.

j. The defendants have refused to furnish individual machines to shoe manufacturers operating machinery of competitors, such refusals being either absolute or modified by demands for prohibitive installation charges.

(1) About December, 1911, Carleton & Hunt, shoe manufacturers, Haverhill, Massachusetts, then manufacturers of turn and McKay shoes, were then using one sewing machine and channeling machine of the Haverhill Shoe Machinery Company. About that time they desired to engage in the manufacture of welt shoes and ordered a line of welt machinery from the defendants, and were informed by the defendants that they would have to discontinue the use of the Haverhill sewing machine before welt machinery could be installed. An alternative proposition, however, was made to Carleton & Hunt by the defendants to install welt machinery upon a payment of an installation charge, which was practically prohibitive, in addition to the regular royalty charges.

(2) About June, 1912, Ira J. Webster, shoe manufacturer, Haverhill, Massachusetts, who had been operating two Pettengill nailing machines which he owned outright, endeavored to obtain from the defendants a pulling-over machine and a toe-capping machine. In view of the fact that he was operating independent machinery, the defendants demanded an excessive installation charge on the pulling-over and toe-capping machines, in addition to the royalty charges, which Webster could not afford to pay. Webster then suggested his willingness to pay the regular royalty charges on the defendants' rapid heelers, in order to obtain the pulling-over and toe-capping machines from the defendants, provided he be allowed to continue operations on the Pettengill machines. He was unable to

1404 make any satisfactory arrangement with the defendants, and the Pettengill machines have been removed from his factory.

k. The defendants have threatened to take further steps to increase and perfect their control of the shoe machinery business, not only of the United States, but of the world.

J. A. FOWLER,
Assistant to the Attorney General.
WILLIAM S. GREGG,
Special Assistant to the Attorney General,
of Counsel for Petitioner.

STIPULATION.

[Filed July 23, 1913.]

It is hereby agreed and stipulated between counsel for all the parties that the demurrers of the following defendants:

Thomas G. Plant Company,
Rimmon Eyelet Company,
S. O. & C. Corporation,
Campbell, Bosworth Machinery Company,
United Fast Color Eyelet Company,
United Awl & Needle Company,
J. C. Rhodes & Company, Inc.,
Boston Blacking Company,

and the demurrer and answer of S. A. Felton & Son Company, need not be printed in the record, as the petition has been dismissed as to said defendants, by order of court, entered April 16, 1912.

W. S. GREGG,
Special Assistant to the Attorney General,
for Complainant.
CHARLES F. CHOATE, Jr.,
for Defendants.

1405 *Order of court directing the taking of testimony, with respect to patents, before an examiner, June 27, 1913.*

PUTNAM, BROWN, and DODGE, JJ. It is ordered that the taking of testimony, both for the peitioner and defendants, with respect to the allegations of the peition set forth in the paragraph beginning at the bottom of page 15 and ending at the beginning of Section IV on page 16, of the printed petition in the above-entitled cause, be, and is hereby, referred to Charles K. Darling, as special examiner; and that for the purpose of taking such testimony the petitioner

is allowed until August 12th, inclusive, to present its evidence in chief, and the defendants are allowed from that date until September 27th, inclusive, to present testimony in defence of the proofs presented by the petitioner before the examiner, and the petitioner is allowed from the last named date to October 11th, inclusive, 1913, to present evidence in rebuttal. The court reserves control of the proceedings before the examiner, so far as either party finds it necessary to protect their rights; and on any question as to the admission of proofs, either party may apply to the court.

By the court:

CHARLES K. DARLING, *Clerk.*

1406 *Order extending time for taking testimony before examiner under order dated June 27, 1913.*

[August 8, 1913.]

PUTNAM & DODGE, JJ. It is ordered (both parties consenting hereto) that the times for taking testimony under the order dated June 27, 1913, entitled "Order directing the taking of testimony with respect to patents before an examiner," be extended two (2) weeks, the petitioner to be allowed until August 26, 1913, inclusive, for evidence in chief, the defendants to have until October 11, 1913, inclusive, for testimony in defence, and the petitioner to have to October 25, 1913, inclusive, for rebuttal.

By the court:

CHARLES K. DARLING, *Clerk.*

The above-named parties hereby consent to the entry of the foregoing order.

ALLEN WEBSTER,
Special Assistant to the Atty. General
for Petitioner.
CHAS F. CHOATE, JR.,
for Defendants.

JULY 31, 1913.

1407 *Order extending time for taking testimony before examiner under order dated June 27, 1913.*

[September 12, 1913.]

PUTNAM, DODGE, & BROWN, JJ. It is ordered (both parties consenting hereto) that the times for taking testimony under the order dated June 27, 1913, as modified by the order of August 8, 1913, be further extended so that the petitioner be allowed until September

1, 1913, inclusive, for evidence in chief; the respondents be allowed until November 1, 1913, inclusive, for evidence in defense, and the petitioner be allowed to November 14, 1913, inclusive, for rebuttal.

By the court:

CHARLES K. DARLING, *Clerk.*

The above-named parties hereby consent to the entry of the foregoing order.

CHAS. F. CHOATE, Jr.,
for Defendants.
WM. S. GREGG,
Spl. Asst. to the Attorney General.

1408 *Stipulation.*

[Filed September 20, 1913.]

It is hereby agreed between counsel for the petitioner and for the defendants that petitioner's Exhibit No. 162, to wit, a certified copy of the record in the case of United Shoe Machinery Company vs. Thomas G. Plant Company et al., in the Supreme Judicial Court for Suffolk County, Massachusetts, may be used upon the final hearing and upon appeal in the cause at bar without printing the same as a part of the record.

W. S. GREGG,
of Counsel for Petitioner.
CHAS. F. CHOATE, Jr.,
Counsel for Defendants.

1409 *Petitioner's motion to strike out.*

[Filed December 2, 1913.]

Now comes the petitioner and shows that under the order of reference to a special examiner the defendants were only authorized to introduce testimony before the examiner in defence of the proofs presented by the petitioner before the examiner.

That the petitioner introduced proofs before the examiner relating to patents on—

Welt and turn machines, out-sole stitchers, lasting machines, heel-nailing and attaching machines, channeling machines, rough rounders and channelers, sole laying, leveling, or beating machines, skiving machines, pegging machines.

That the defendant the United Shoe Machinery Company offered patents and evidence in reply to the proofs presented by the petitioner, and further,

That in the proceedings before the examiner said defendant, against the objections of counsel for the petitioner seasonably inter-

posed, offered in evidence, and caused to be marked as exhibits hundreds of additional patents which did not relate to the patents offered in evidence by the petitioner and were not in defence of the petitioner's proofs, and offered and caused to be inserted in the records testimony in reference to said additional patents, none of which testimony was in defence of the proofs presented by the petitioner.

1410 That the machines in reference to which the defendant offered evidence, by way of patents and testimony in reference to such patents and in reference to pending applications, which evidence was not in defence of any of the proofs presented by the petitioner, comprise those noted in the list hereto attached and made a part hereof.

And the petitioner moves that all patents offered in evidence by the defendant relating to the machines noted in the schedule hereto annexed and all testimony in reference thereto and in referece to pending applications for patents and all other evidence offered by the defendant not in defence of the proofs presented by the petitioner before the examiner be stricken from the record.

The testimony, patents, and matters herein objected to are too numerous and extended to be herein specifically pointed out, but, if this honorable court so directs, will be specified hereafter by reference to pages, etc., of the printed record, when copies of the printed record are procured.

ALLEN WEBSTER,
Special Assistant to the Attorney General
in above-named case.

1411 *Petitioner's motion to strike out.*

[Filed December 2, 1913.]

Now comes the petitioner in the above-entitled cause, and shows that the petition was filed December 12, 1911.

That in the proceedings before the special examiner the defendant the United Shoe Machinery Company offered in evidence 157 patents bearing date and issued after the date of the filing of said petition, and caused said patents to be marked as exhibits in this cause, and caused to be inserted in the record testimony with reference to said patents and with reference to the structures shown therein and with reference to various transactions occurring after the date of the filing of the petition herein, all being against the objection of counsel for the petitioner seasonably taken. All of which matters and things tioner before the examiner be stricken from the record.

The petitioner prays that all said patents and all testimony with reference to the same, and with reference to all matters and things

occurring after the filing of the petition herein, be stricken from the record.

The matters herein referred to will be particularly pointed out by reference to page and number, if so directed by this honorable court.

ALLEN WEBSTER,
Special Assistant to the Attorney General
in the above named case.

1413 *List of parts of exhibits to be specifically relied upon by petitioner, etc.*

[Filed December 9, 1913.]

WASHINGTON, D. C., *November 12, 1913.*

To United Shoe Machinery Company and other defendants—In re United States, petitioner, v. United Shoe Machinery Company, of New Jersey, et al., in Equity No. 301—District Court of the United States for the District of Massachusetts.

There is hereby submitted the following information, indicating certain parts of exhibits introduced on the taking of testimony in open court, that will be specifically relied upon by petitioner, and also some of the purposes for which said documentary evidence was introduced, to wit:

1. Exhibit 1, certificate of incorporation of United Shoe Machinery Company, will be relied upon as a whole to show said company's incorporation, date of its organization, and the powers and objects thereof.

2. Exhibit 2, certificate of incorporation of United Shoe Machinery Corporation, will be relied upon as a whole to show said company's incorporation, date of its organization, and the powers and objects thereof.

3. Exhibits 3 to 13, inclusive, and Exhibit 59; forms of leases used by the companies which combined and promoted the organization of United Shoe Machinery Company. Said leases will be relied upon as a whole to show the status of the shoe machinery business before the organization of the United Company; the manner in which the several branches of said business had been conducted when said consolidation into United Shoe Machinery Company was made; and that there was competition between said several companies, and especially between the Eppler and Goodyear companies in respect to welting machines and out-sole stitching, and between the Goodyear Company and the Consolidated & McKay Lasting Machine
1414 Company with respect to lasting machines; and further, that there were unlawful restrictions in some of the leases in use by said companies, especially in Exhibits 3, 4, and 5, leases by the

Goodyear Company which contained clauses prohibiting the use of the elased machinery with other than Goodyear machines, and Exhibits 6, 7, 9, and 10, leases of the Consolidated & McKay Company, which contained clauses requiring the use of the leased machines to the full capacity, and also clauses requiring the lessee to take all additional machines which it might need from the lessor; and of Exhibit No. 13, by the Davey Pegging Machine Company, which contained clauses requiring the exclusive use of said pegging machine for pegging purposes, and requiring all additional machines that might be needed for said purposes to be taken from the lessor.

4. Exhibits 14 to 58, inclusive, 149 and 168 to 174, inclusive, and 176, forms of leases executed by the United Shoe Machinery Company and companies under its control. These leases will be relied upon as a whole to show the general system by which the United Comapny carries on its business, and the object and intent of said system. Furthermore, special clauses contained therein will be specifically relied upon, as follows:

(a) A provision which may be designated as the "full capacity" clause; an example of which, taken from Exhibit No. 21, reads as follows:

"The lessee shall use the leased machinery to its full capacity upon all boots, shoes, or other footwear, or portions thereof, made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used." (Exhibit No. 21, lease for No. 5 lasting machine, B. of E., p. 185.)

This clause, or its equivalent, appears in Exhibits Nos. 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46, 52, 168, 172, 173, 174, and 176.

(b) A provision which may be designated as the "additional machines" clause, an example of which, taken from Exhibit No. 31, is as follows:

"In case the lessee has more work of the kind which can be
1415 performed by any of the machines belonging to the metallic department of the lessor than the capacity of the metallic department machinery which he has under lease from the lessor will permit, then the lessee shall take from the lessor under a like lease and license sufficient additional metallic department machinery to perform the work." (Exhibit No. 31, metallic department lease, B. of E., p. 291.)

This clause, or its equivalent, appears in Exhibits Nos. 27, 29, 30, 31, 32. 33, 34, 35, 36, 39, and 176.

(c) A provision which may be designated as the "exclusive-use" clause, an example of which, taken from Exhibit No. 21, is as follows:

"If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting

all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as a result of assignment to the lessor or otherwise; and the possession of and full right to and control of all lasting machines, lasting machinery, lasting mechanisms, and lasting devices, the lease or license of which is so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever." (Exhibit No. 21, lease for No. 5 lasting machine, B. of E., pp. 187–8.)

This clause, or its equivalent, appears in Exhibits 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 37, 38, 39, 44, 45, 46, 52, 149, 168, and 171.

(d) A provision which may be designated as the "prohibitive" clause, an example of which, taken from Exhibit No. 21, is as follows:

"The leased machinery shall not nor shall any part thereof be used in the manufacture or preparation of any welted boots, shoes, or other
footwear, or portions thereof, which have been or shall be
1416 welted in whole or in part or the soles in whole or in part stitched by the aid of any welt-sewing or sole-stitching machinery not held by the lessee under lease from the lessor, or in the manufacture or preparation of any turned boots, shoes, or other footwear, or portions thereof, the soles of which have been or shall be in whole or in part attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor or in the manufacture of any boots, shoes, or other footwear which have been or shall be in whole or in part pulled over, slugged, heel-seat nailed, or otherwise partly made by the aid of any pulling over or 'metallic' machinery not held by the lessee under lease from the lessor." (Exhibit No. 21, lease for No. 5 lasting machine, B. of E., page 185.)

This clause, or its equivalent, appears in the following lease forms: Exhibits Nos. 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 34, 35, 36, 37, 38, 39, 40, 41, 43, 45, 51, 52, 56, 149, 168, 169, 170, 171, and 172.

(e) A provision which may be designated as the "forfeiture of every lease" clause an example of which, taken from Exhibit 21, is as follows:

"But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or

contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. . . . Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted." (Exhibit No. 21, lease for No. 5 lasting machine, B. of E., page 185.)

This clause, or its equivalent, appears in every lease form of
1417 United Shoe Machinery Company and its subsidiary companies and introduced as exhibits.

(f) Petitioner will also rely on the clause which requires the lessee to purchase all repair parts from the lessor, and which appears in all of said lease forms, and also upon the clauses which specify the amount of royalty charged and the amount of initial payment, where such is required, and the amount of return charge, where such charge is required, for the purpose of showing the additional burdens assumed by the lessees under those leases which do not contain the "prohibitive clause."

5. Exhibits 59 to 131, inclusive, and 143 to 145, inclusive, some of which are contracts for the purchase of stocks and properties of other concerns engaged in different branches of the shoe machinery business, and some of which are contracts of employment by United Shoe Machinery Company.

Petitioner will rely upon said exhibits.

(a) Each as a whole, and also collectively, to show the general policy of defendants to acquire the business of shoe-machinery concerns and to eliminate all competitors and all possible competitors from such business, and to monopolize the shoe-machinery industry.

(b) It will rely particularly upon certain clauses which require the vendors to assign all rights and interests in and to all inventions and improvements in the machinery mentioned which might for an indefinite or for a definite period after the execution of the contract be possessed by the vendors, and which bind the vendors not to engage in certain lines of business for an indefinite or definite length of time and not to engage in any business in competition with the

United Shoe Machinery Company or the subsidiaries of said company. Clauses of this kind appear in Exhibits Nos. 60, 67, 68, 70, 74, 78, 81, 82, 83, 84, 85, 87, 91, 92, 93 94, 95, 98, 99, 100, 101, 104, 105, 106, 108, 109, 111, 112, 113, 114, 115, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 143, 144.

(c) It will also rely upon certain clauses in the contracts of employment which bind the party employed to convey to the employer all improvements or inventions relating to the machinery
1418 described which the employee might acquire within an indefinite period or a period specifically fixed, and which binds the employee not to enter business in competition with United Shoe Machinery Company or with any of its subsidiaries. Clauses of the kind mentioned appear in Exhibits Nos. 64, 65, 69, 72, 73, 107, and 126.

6. Exhibits 133 to 142, inclusive, contracts between Thomas G. Plant and United Shoe Machinery Company. All parts of these exhibits will be relied upon to show the kind of properties acquired by said purchases and extent and value of same, and that said Plant and the United Company were at the time said purchase was made in active competition, and consequently the object of the United Company in acquiring said properties.

The record in the case of United Shoe Machinery v. Thomas G. Plant, which was introduced, but by agreement not printed, will be relied upon for the same purpose, and also to show the conduct of the United Company towards Plant prior to said purchase and the inducements which caused Plant to sell his property to the United Company.

7. Exhibit 146, an address to the lessees of the United Shoe Machinery Company, dated June 10, 1910, will be relied upon as a whole to show the policy and growth of the United Shoe Machinery Company, and the first paragraph on page 1071 of the printed record will be specially relied upon to show one of the methods of inducing manufacturers to patronize the United Shoe Machinery Company instead of its competitors.

8. Exhibit 147, statement of Charles H. Jones, published May 24, 1906, was introduced to show what was actually said by Mr. Jones and to make clear his explanation of parts thereof.

9. Exhibit 149, lease of Goodyear machines to Selz-Schwab & Company, dated April 4, 1905, will be relied upon as a whole to show terms of lease, and paragraphs 1, 7, and 8 will be especially relied upon to show that Selz-Schwab & Company was prohibited from using Haverhill machines, as testified to by Mr. Selz, and also such other machines as indicated in said clauses.

1419. 10. Exhibits Nos. 151, 152, 153, and 175, which are addresses of officers and directors to stockholders:

(1) Of McKay Shoe Machinery Company, dated February 15, 1899;

(2) Goodyear Shoe Machinery Company, dated February 8, 1899;

(3) International Goodyear Shoe Machinery Company, dated February 18, 1899; and

(4) Consolidated & McKay Lasting Machine Company, dated February 11, 1899.

All parts of said addresses will be relied upon to show method of organization of the United Company, the amounts paid the constituent companies, and the inducements that led up to and the purposes of its formation.

11. Exhibit No. 154, proposition submitted to Mr. Winslow by Jackson Johnson, representing certain shoe manufacturers, will be relied on to show efforts made by manufacturers to secure modification of leases and terms desired by them, and the continued and persistent denial of any relief by the United Company and its officers.

12. Exhibits Nos. 155 and 156, correspondence between F. C. Rand and Mr. Winslow, will be relied upon for the purpose stated under No. 11.

13. Exhibit No. 157, agreement between Drew, Selby & Company and United Company, dated March 13, 1900, will be relied upon to show that the United Company obtained control of the machines mentioned therein, in the manner mentioned, and also the company's method of restraining the use of independent machines.

14. Exhibits Nos. 180, 181, 182, 183, 184, 185, and 186, statements of financial condition of the United Shoe Machinery Company on March 1st of 1901, 1902, 1903, 1904, 1905, 1906, and 1907, and Exhibits 164, 165, 166, and 167, copies of reports of the United Shoe Machinery Corporation to the annual meetings of the stock-
1420 holders of said company for the years 1908, 1909, 1910 and 1911, will be relied upon to show the growth of the company's resources and power.

15. Exhibit No. 187, statement showing amount of capital stock and amount thereof owned by United Shoe Machinery Company, and nature of business of each corporation in which the United Shoe Machinery Company has a financial interest, and Exhibit No. 188, list showing officers and directors of such companies, will be relied upon as a whole to show relation between United Company and its subsidiaries, and that they are engaged in a naturally competitive business with that of the United Company, and also to show the

extent of control by the United Company over said subsidiaries and the entire shoe-machinery business.

16. Exhibit 189, agreement dated September 11, 1899, between United Shoe Machinery Company and Henry W. Peabody and others, doing business under the name of Henry W. Peabody & Company. The first paragraph of the preamble of this agreement is particularly relied upon to show that the United Company had already secured control of certain lines of the shoe-machinery business and was intending to secure control of other parts thereof.

The foregoing information is given in compliance with the suggestion of the presiding judge, made during the introduction of the Government's testimony in open court, and the defendant may be informed as to the principal reasons for introducing the said documents, and of many of the particular parts thereof, which will be relied upon; but some exhibits and some parts of other exhibits may by oversight or for other reasons be omitted herefrom, and petitioner expressly reserves the right to rely upon any and all exhibits, and any and all parts of exhibits, for any purpose which it may deem material to any question involved in the case, regardless of whether the parts and purposes are herein expressly stated or not.

J. A. FOWLER,
W. S. GREGG,
Special Assistants to the Attorney General.

1421 *Stipulation as to objections to testimony and further examination before special examiner.*

[Filed Jan. 19, 1914.]

With reference to the motions of the United States relating to the admission of testimony before the special examiner, which motions are shown by and printed in the record on pages 2841 and 2846, the United States withdraws its motions and waives its objections founded on the claim that the evidence was improperly taken before the special examiner, reserving all other objections for irrelevancy and incompetency heretofore or hereafter made with the understanding, to which the court assents and agrees, that the United States may make further cross-examination or introduce evidence in rebuttal with reference to the matters to which the objections and motions relate, the further examination and cross-examination to proceed before the special examiner or proceed at the resumption of the hearings on the third of February in open court, as the parties may hereafter agree or the court may order.

C. F. C., JR.
M. S. G.

1422 *Request for leave to amend petition.*

[Filed January 14, 1914.]

Petitioner in the above-entitled cause asks leave to amend its petition, upon its face, as follows:

I.

(1) That the first and second sentences in Section IV be amended so as to read as follows:

Defendants Sidney W. Winslow, William Barbour, Elmer P. Howe, John H. Hanan, George E. Keith, Edward P. Hurd, George W. Brown, Wallace F. Robinson, Rudolph Matz, and others, owners, officers, directors, and agents of said Goodyear Shoe Machinery Company, International Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, and Davey Pegging Machine Company, not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States and of other countries, which they had enjoyed for many years, pertaining to shoe machinery, and parts thereof, and designing and intending unduly, unreasonably, and unlawfully to extend, expand, and perpetuate said monopolies and rights, and to enhance the value thereof at the expense of the boot and shoe manufacturers and of the public generally, and to use the same as a means for unlawfully controlling interstate and foreign trade and commerce in shoe machinery to a greater extent than was warranted by said letters patent, determined to acquire a complete monopoly of the manufacture, sale, and lease of all shoe machinery used in adjusting and attaching the upper to the last, in preparing the bottom and heel and fastening them to the upper, and in finishing the bottom and heel of the shoe after said operations had been performed; and to destroy existing competition among the manufacturers and dealers in such machinery, and through unlawful combinations and agreements to exclude all others from said trade
1423 and commerce. For the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery of the kinds above described, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes, and thereby to exclude all competition by other manufacturers of such shoe machinery and to monopolize

the trade and commerce therein among the States and with foreign countries.

(2) That the first paragraph of Section VIII down to and including the phrase "and foreign countries" be amended so as to read as follows:

In addition to the foregoing, defendants, through United Shoe Machinery Company of New Jersey, by the purchase of all or a controlling interest in the business of a number of individuals and corporations engaged in the shoe machinery business in foreign countries, by the organization of other corporations and the ownership of their capital stock, and by contracts, agreements, and combinations with such corporations, have restrained and monopolized, and now restrain and monopolize, trade and commerce, between this and foreign countries, of all the principal and auxiliary machines used for adjusting and attaching the upper to the last, preparatory to attaching the bottom to the upper, machines for preparing the bottom and heel and attaching them to the upper, and machines for finishing the bottom and heel, and clicking and eyeletting machines.

(3) That Section XI be amended so as to read as follows:

By virtue of the unlawful contracts and combinations above described, defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for adjusting and attaching the bottoms to the uppers of boots and shoes, and kindred and auxiliary machines; they have obligated scores of successful shoe machinery men to refrain from trade and
1424 commerce therein and have acquired a monopoly of interstate and foreign trade and commerce in machines used for adjusting and attaching the upper to the last preparatory to attaching the bottom to the upper, machines for preparing the bottom and heel and attaching them to the upper, and machines for finishing the bottom and heel, and clicking and eyeletting machines.

II.

That the second paragraph of Section XII, entitled "Conclusion," be amended so as to read as follows:

(1st) The lease and license agreements heretofore described when taken as a system, and the several restricted provisions therein when taken singly or in connection with the other provisions of the same lease, or with the same and other provisions of other lease and license agreements held by the same lessee, have been ever since their adoption, and still continue to be, unlawful in this:

(a) It was and is unlawful for defendants, or either of them, to exact from or to execute to any of its lessees an instrument of lease

or license containing any or all of the following covenants or agreements, or any agreement or covenant of a similar character, to wit, (i) a covenant or agreement that the lessee should use the leased machinery to its full capacity; (ii) an agreement that in case the lessee should have more work of the same kind as that performed by the leased machine than the capacity of such machine would permit, the lessee should take from the lessor sufficient additional machinery to perform such work regardless of whether such agreement was in the form of a covenant or of a condition authorizing the forfeiture of the leased machinery in case it should be violated; (iii) an agreement or stipulation that if the lessee should fail or cease to use exclusively designated machinery for performing the kind of work described in the lease, the lessor might at its option terminate that lease and all other leases held by the lessee from the lessor for machinery of the class or classes described; (iv) a covenant or agreement prohibiting the use of the leased machinery upon shoes or
1425 other footwear than such as had been or should be operated upon by certain designated machinery belonging to the lessor; (v) a covenant or agreement that if any breach or default should be made in the observance of any one or more of the conditions in that or any other lease or license agreement existing between the lessor and lessee, the lessor should have the right to terminate any and all leases of or licenses to use machinery then in force between the lessor and lessee; (vi) a covenant or agreement admitting the validity of the patents owned by the lessor, and under which lessee was licensed, any of the inventions of which might be embodied in the leased machinery, and also, in the Goodyear leases, admitting the validity of the title of the lessor to, and its right to the exclusive use of, the trade names of "Goodyear Welt" and "Goodyear Turn," and stipulating that the lessee should not infringe or contest at any time, either before or after their expiration, the letters patent specified in a schedule attached to the lease, or (in said Goodyear leases) the lessor's right to the use of said trade names; (vii) an agreement upon the part of the lessee extending the lease for a period of seventeen years.

(b) Said covenants and agreements have been and are especially unlawful when taken in connection with other covenants and agreements in the same lease, and with the same and other covenants and agreements in other leases held by the same lessee from the United Shoe Machinery Company, of New Jersey, or from the companies controlled by it.

(c) Each and all of the leases executed by defendants are especially unlawful when considered with reference to the existing conditions of the production of and commerce in the shoe machinery

described in this petition as amended, to wit, the fact that said defendants possess a practical monopoly of said production and commerce.

(d) The so-called alternative system of leases whereby for a certain initial payment or increased price of material the lessee might obtain a lease from which one or more of the restrictive clauses enumerated might be omitted is not free of illegality, because the state of production of and interstate and foreign commerce in shoe machinery is such that the omission of such clause
1426 or clauses has been and is of no practical benefit to the lessee, and because the amount of said initial payment, or increased price of material, is such as to induce and constrain the lessee to take the restricted leases in preference to the so-called unrestricted lease, and, further, because said so-called unrestricted leases are in and of themselves unlawful on account of the restrictive provisions, above described, contained therein.

(e) The system of leases as devised by said defendants and used by them is unlawful because it was and is designed to place the shoe machinery business, including the interstate and foreign commerce therein, under the domination and control of defendants, which object has been fully accomplished thereby.

(f) All of the covenants, conditions, and agreements, and the lease and license agreements wherein said covenants, conditions, and agreements are contained, are unlawful regardless of the claim of defendants that they have valid patents on the leased machinery or on parts thereof or on devices attached thereto, because (i) in many instances the machine was not, when the lease and license therefor was executed, protected by valid, basic patents; (ii) in other instances the patent on the leased machinery or appliances attached thereto expired, or will expire, after the execution, but before the termination, of the lease; (iii) the existence of a valid patent upon an entire machine, or any part thereof or attachment thereto, does not authorize in and of itself the execution of a lease for such machine containing any one or more of the restrictive clauses above described; and (iv) the covenants, conditions, and stipulations appearing in the various lease and license agreements heretofore described were and are required in pursuance of the general intent and purpose of defendant to restrain interstate and foreign trade and commerce in shoe machinery and monopolize the same, have been and are one of the most effective parts of the scheme initiated by the contracts and conspiracies to organize the defendant United Shoe Machinery Company, of New Jersey, and continued to the present time by the acquisition of the properties of competing companies and by the other acts heretofore described.

1427 III.

That Section XII of the petition be amended, by inserting a sixth reason why defendants' system of leasing machinery is unlawful, as follows:

(6th) The system of defendants in putting out their machinery by leases containing the covenants and agreements heretofore described is unlawful because it prevents full and free competition among shoe manufacturers in the production and sale in interstate commerce of shoes and other footwear.

J. A. FOWLER,
W. S. GREGG,
Special Assistants to the Attorney General.

Objections of defendants to motion of the United States to amend its bill, made January 14, 1914.

[Filed February 3, 1914.]

And now comes the defendants severally, and severally object to said motion of the United States to amend its bill, and severally set forth upon the record their objections thereto, as follows:

1. Because the defendants would be prejudiced by the allowance of the amendment.

2. Because the proposed change is one of substance and not one merely of form.

3. Because to allow the proposed amendment would be inequitable and unfair to and would greatly prejudice the defendants in that the issue which has been tried and as to which the defendants have cross-examined the witnesses of the United States and introduced their own testimony is materially different from the issue presented by the proposed amendment.

4. Because the cause has not been heard upon any assumption that the issues presented by the proposed amendment were the real issues in dispute.

1428 5. Because the proposed amendment would not conform the pleadings to the proof.

6. Because to allow the proposed amendment would be inequitable in that the defendants would suffer more hardship from the allowance of the amendment than the United States would suffer from its denial.

7. Because to allow the proposed amendment would be inequitable and unfair to the defendants in that it would be a real impossibility to separate from the record as it now stands the evidence relevant

to the issue as presented by the amendment from the evidence irrelevant to such issues.

8. Because the United States has not sustained the burden which rests upon it of showing that special circumstances exist to warrant the allowance of a material amendment of the bill at the present stage in the proceedings.

9. Because all the facts having any bearing upon the amendment were known to the United States at the date when the original bill was brought and the proposed amendment could, therefore, have been made a part of the original bill, or they were in any event known to the United States when it had presented its testimony and rested, and, therefore, it is now too late for the United States to present this amendment.

10. Because the proposed amendment is too vague, indefinite, and uncertain.

11. Because if any amendment is proper at this stage of the proceedings it should be clear and specific and should conform to the evidence, which is not true of the proposed amendment.

12. Because no evidence has been introduced pertaining to certain charges made in the proposed amendment.

13. Because if any decree were entered against the defendants upon the bill as amended, it would deprive the defendants of their right to have a decree or finding entered against them only after full hearing and the right to cross-examine all witnesses upon the charges made against them.

14. Because the defendants at this stage of the proceedings are entitled to a decree on the charges and issues presented by the
1429 original bill without such material change therein as would be effected if the proposed amendments were allowed.

15. Because any decree against the defendants which might follow an allowance of the proposed amendment would deprive the defendants of their property and rights without due process of law inasmuch as the defendants have had no opportunity to defend against the issues presented by the proposed amendment and no opportunity to cross-examine the witnesses presented by the Government as to the issues presented by such amendment.

16. Because the proposed amendment abandons the case alleged in their bill by the United States and makes a new and different case by way of amenement.

17. Because the original bill charges an intent to monopolize shoe machinery generally, and an actual monopoly in shoe machinery generally, while the bill, if amended, charges an intent to monopolize and an actual monopoly in only specific kinds of shoe machinery.

18. Because the intent charged in the original bill, with which all the acts charged therein were alleged to be done, was an intent to

monopolize shoe machinery generally, while the intent charged in the bill, if amended, is an intent to monopolize only specific kinds of shoe machinery.

19. Because the proposed amendment comes too late.

20. Because the attention of the United States was called to the necessity of either proving their allegations or amending, as early as May 20, 1913, before the taking of testimony herein, and the United States neglected and refused either to prove their allegations or to amend the same until January 13, 1914, after the close of defendants' testimony in the case, and then attempted to amend the same without any proof of the original allegations.

21. Because if the amendment be allowed at this stage, after the practical close of the case, it will require the reopening of the case, new pleadings, and new evidence.

22. Because if the propesed amendments are allowed, the bill as amended becomes inconsistent and repugnant in that the allegation in regard to the leases, at page 21 of the bill, alleging an
1430 intent to acquire complete ~~control~~ of shoe machinery, is inconsistent with the proposed amendment at page 17, alleging an intent to monopolize only specific kinds of shoe machinery.

23. Because if the proposed amendments are allowed, the bill becomes inconsistent and repugnant in that the allegation at page 27 in regard to acquisitions (described from pages 27 to 73 of this bill), and that they were acquired in pursuance of their purpose to monopolize the shoe machinery industry, is inconsistent with and repugnant to the allegation at page 17, as amended, in regard to an intent to monopolize only specific kinds of shoe machinery.

24. If the amendment on page 17, immediately heretofore described, is made, the allegation on page 69 of the bill, that defendants to monopolize trade and commerce in shoe machinery entered into agreements with Plant, becomes inconsistent with and repugnant to said amendment.

25. If the amendment on page 17 heretofore referred to is made, the allegation on page 26 as to the resulting concentration in defendants' hands of the almost entire shoe machinery business becomes inconsistent with and repugnant to said amendment.

26. If the amendment on page 17 heretofore referred to is made, the allegation in regard to the organization of the United Shoe Machinery Corporation, on page 75, relating to trade and commerce in shoe machinery generally, becomes inconsistent with and repugnant to said amendment.

27. Because the second section of the proposed amendment, relating to leases, sets up many new charges of invalidity as to lease provisions not heretofore set forth by the bill.

28. Because the second section of said proposed amendment complains of the invalidity of an alleged system of leases, whereas there is no evidence in the case as to the existence of any such system, and the same is not complained of in the bill.

29. Because the second section of said proposed amendment complains of the invalidity of an alleged system of leases, whereas the existence of any such system of leases has been heretofore expressly disclaimed by the counsel for the United States.

30. Because in the second section of said proposed amend-
1431 ment, under the heading "(1st) (a) (ii)," the clause therein referred to, which may be called the additional machinery clause, is new and not heretofore contained or set forth in the pleadings of the United States.

31. Because in the second section of said proposed amendment, under the heading "(1st) (a) (iv)," the clause therein referred to, which may be called the prohibitory use clause, is new and not heretofore contained or set forth in the pleadings of the United States.

32. Because in the second section of said proposed amendment, under the heading "(1st) (a) (v)," the clause therein referred to, which may be called the right-to-terminate clause, is new and not heretofore contained or set forth in the pleadings of the United States.

33. Because in the second section of said proposed amendment, under the heading "(1st) (a) (vi)," the covenant and agreement therein contained, in regard to the admission of the validity of patents, is new and not heretofore contained or set forth in the pleadings of the United States.

34. Because in the second section of said proposed amendment, subdivision "(b)," setting up that other covenants and agreements are especially unlawful, is new and not heretofore contained or set forth in the pleadings of the United States.

35. Because in the second section of said proposed amendment, subdivision "(c)," setting up that each lease is especially unlawful when considered in reference to existing conditions, is new and not heretofore contained or set forth in the pleadings of the United States, and differs materially and in substance from any charge therein contained.

36. Because in the second section of said proposed amendment, subdivision "(d)," relating to a so-called alternating system of leases, is new and not heretofore contained or set forth in the pleadings of the United States, and differs materially and in substance from any charge therein contained.

37. Because in the second section of said proposed amendment, subdivision "(e)," relating to the system of leases being unlawful,

is new and not heretofore contained or set forth in the plead-
1432 ings of the United States, and differs materially and in substance from any charge therein contained.

38. Because in the second section of said proposed amendment, subdivision "(f)," is objected to because it expands paragraph B at page 81 of the bill, so as to make the charge therein contained differ materially and in substance from the charge now contained therein.

39. Because the third section of complainant's proposed amendment, in relation to the system of defendants in putting out leases preventing competition in the manufacture of shoes, is absolutely new and novel and not set forth or referred to in any way in the pleadings of the United States.

40. Because upon the whole case this court should, in the exercise of its discretion, refuse to allow the amendment prayed.

By their attorneys:

FREDERICK P. FISH,
CHARLES F. CHOATE, Jr.,
WILLIAM A. SARGENT,
MALCOLM DONALD,
HAROLD G. DONHAM,
WALTER B. FARR,
LAFAYETTE R. CHAMBERLIN.

Order of court, February 4, 1914.

PUTNAM, DODGE, and BROWN, JJ.: As the request of the United States filed January 14, 1914, for leave to make sundry amendments to the petition with reference to Sections IV, VIII, and XI, with substitutions, is not urged as though the United States deemed the same necessary, and as it is objected to by the defendants, we do not feel justified at this late stage in allowing it, and the same is disallowed. This, however, is with the express statement on the part of the court that it reserves all questions with reference to the construction of the pleadings as urged by the defendants, whether as original or as modified by the progress of the case, is so modified.

1433 The request of the United States to be allowed to amend Section XII is denied.

It is ordered that the amendments offered by the United States and this ruling with reference thereto be made a part of the record of the proceedings.

By the court:

CHARLES K. DARLING, *Clerk.*

Order, February 10, 1914.

PUTNAM, DODGE, and BROWN, JJ.: With the consent of the parties, it is ordered that the United States shall have from February 24 to March 10, 1914, inclusive, for further cross-examination of Nelson W. Howard, and the introduction of evidence in rebuttal before the special examiner, Charles K. Darling, with reference to the matters provided for in the order entered in this cause on January 14, 1914; and also to introduce evidence before the special examiner in rebuttal to evidence submitted by the defendants in open court with respect to patents and machines obtained by the defendants from Thomas G. Plant.

And the defendants shall have from March 11 to March 24, 1914, inclusive, to introduce evidence in surrebuttal with respect to the evidence of the United States relating to matters provided for in the order of January 14, 1914, and evidence introduced by the United States before the special examiner with respect to patents and machines obtained by the defendants from Thomas G. Plant.

The court reserves control of the proceedings before the special examiner.

By the court:

CHARLES K. DARLING, *Clerk*,
By JOHN E. GILMAN, Jr., *Deputy Clerk*.

1434 District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA, PETITIONERS, v. UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, and others, respondents.	In Equity. No. 301.

Before Putnam and Dodge, Circuit Judges, and Brown, District Judge.

[March 18, 1915.]

PUTNAM, J.: Of course, a proceeding on the criminal side of the court can not operate as an estoppel in a civil proceeding; but it may be referred to safely in an introductory way, and in explanation of questions of law to be relied on.

The general features of this case are largely stated in United States v. Winslow, 227 U. S., 202, and 195 Fed. Rep., 578; but there are differences, so that we will quote extensively from the bill in the present suit.

In so much of the bill as relates to the organization, we have no occasion to make any distinction between the United Shoe Machinery

Company and the United Shoe Machinery Corporation, two New Jersey organizations who are made respondents; and we do not know that we will have occasion to refer to the subordinate organizations made respondents and known as the United Shoe Machinery Company, of Maine, etc.

1435 The bill alleges the organization of the United Shoe Machinery Company, of New Jersey, as follows:

"Defendants Sidney W. Winslow, William Barbour, Elmer P. Howe, John H. Hanan, George E. Keith, Edward P. Hurd, George W. Brown, Wallace F. Robinson, Rudolph Matz, and others, owners, officers, directors, and agents of said Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, Consolidated and McKay Lasting Machine Company, McKay Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, and Davey Pegging Machine Company, not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States and of other countries which they had enjoyed for many years, pertaining to shoe machinery, and parts thereof, and designing and intending unduly, unreasonably, and unlawfully to extend, expand, and perpetuate said monopolies and rights and to enhance the value thereof at the expense of the boot and shoe manufacturers and of the public generally, and to use the same as a means for unlawfully controlling interstate and foreign trade and commerce in shoe machinery to a greater extent than was warranted by said letters patent, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, destroy existing competition among the manufacturers and dealers in such machinery, and through unlawful combinations and agreements to exclude all others from said trade and commerce. For the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes, and thereby to exclude all competition by other manufacturers of such shoe machinery and to monopolize the trade and commerce therein among the States and foreign countries. The various contracts, combinations, conspiracies, and acts, hereinafter described, were steps in carrying out the above mentioned unlawful project. A preliminary agreement was made, and in February, 1899, they incorporated United Shoe Ma-

1436 chinery Company, under the laws of New Jersey, with an

authorized capital of $25,000,000 ($12,500,000 preferred, $12,500,000 common), with broad powers under its charter to manufacture, buy, sell, lease, operate, and deal in and with all kinds of machinery, tools, and implements, and especially in everything in any way connected with or used in the manufacture of boots and shoes. For the stock allotted to each, and for cash, at values far in excess of real worth, four of the old concerns, to wit, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, and McKay Shoe Machinery Company, conveyed to the new corporation, as going concerns, their business of manufacturing, selling, leasing, and dealing in shoe machinery, including their letters patent of the United States and of other countries, and all property and rights used in connection therewith, wherever situated; and their principal owners, managers, directors, and officers became managers, directors, and officers in the new company. Stock of the new company was allotted and received as follows."

At this point the bill shows the distribution of the shares of capital stock of the new corporation among the prior corporations combined in it, or their shareholders. It alleges that the prior corporations conveyed to the new corporation their business, patents, and property rights "for the stock allotted to each and for cash, at values far in excess of real worth." No proof was offered in support of this final allegation, and it has not been insisted upon by the United States.

The bill proceeds: "Prior to the organization of United Shoe Machinery Company, of New Jersey, boot and shoe manufacturers, purchasing or leasing machines from one of the aforesaid companies, were not compelled to use exclusively machines mentioned in the aforesaid groups manufactured by either of the other companies. For example, the shoe manufacturer who held lasting machines under lease from the Consolidated & McKay Lasting Machine Company was not required to use, in connection with that company's lasting machines, welt-sewing machines or outsole-stitching machines of the Goodyear Shoe Machinery Company, or those of any other company, and he was free to obtain such machines wherever he could procure them to the best advantage.
1437 The same was true of the trade in welt-sewing machines and outsole-stitching machines, heeling machines, and metallic fastening machines. Defendants, however, not being satisfied or contented with said portion of the trade and commerce in shoe machinery which they acquired through the organization of United Shoe Machinery Company, of New Jersey, and with the intent to acquire complete control of the business of manufacturing and selling or leasing of shoe machinery among the States and with foreign

countries; to exclude all others therefrom, to enhance the cost of said machines to users thereof, and to wrong and to oppress the public, discontinued the sale to boot and shoe manufacturers of each and all of the machines included in said groups of machines, and unlawfully devised, adopted, and put into effect arbitrary, oppressive, and unreasonable lease and license agreements, which boot and shoe manufacturers have been and are required to agree and conform to in order to obtain from said defendants any of the machines included in said groups."

On the whole, as the case developed, no objection was persisted in by the United States to the fact that the policy of the Shoe Machinery Company was to lease its machines instead of selling them. It was plain that this policy was not injurious in a large sense. It enabled manufacturers of small and moderate means to embark in manufacturing to an extent which would have been impossible for them if they had been obliged to purchase machinery, because many machines are so expensive as to lock up capital and render it dead for practical purposes of financing shoe manufacturing. It is also apparent that a portion of the conditions and provisions of leases were in use without complaint before the United Shoe Company was organized; but it is not necessary that we should detail these facts, because we must take the result of the development as to this topic, at least, as it was found at the time the bill was filed in 1911; and, while the prior condition might mitigate any complaint on that point, it cannot answer it.

The bill further proceeds as follows:

"These agreements contain provisions, not found in their former lease and license agreements, which compel boot and shoe manufacturers leasing any of such machines from defendants to agree
1438 to use exclusively one or more of the classes of machines included in said groups of machines owned and controlled by them upon penalty of having all the machines included in said groups so leased to them by defendants immediately reclaimed and taken away and the lease and license agreements canceled. These contracts further require boot and shoe manufacturers to take each of said machines for a period of not less than seventeeen years, regardless of the terms of the patents relating thereto. Lessees thereunder are compelled to obtain all duplicate parts, extras, mechanisms, and devices of every kind needed or used in operating, repairing, or renewing the leased machinery from defendants, at exorbitant prices fixed by them from time to time. Many of these agreements further provide that the lessee shall, at the expiration of seventeen years, and after he has paid large royalties throughout that period, if he shall then have no further use for the machines, return the same to defendants

at their factory at Beverly, Mass., and shall pay to them a return charge, which in some cases amounts approximately to the original cost of building the machines. Defendants have continually, persistently, and arbitrarily enforced the provisions of said lease and license agreements by all the means in their power as against the boot and shoe manufacturers, and have made it their general policy and practice to refuse to furnish such machines to any and all boot and shoe manufacturers who fail to comply with the terms or spirit of the provisions of said lease and license agreements and to otherwise injure them.

"Defendants, in pursuance of their general purpose, inserted in, and made a part of, each lease and license agreement, provisions reserving to themselves the right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers if the latter should fail or cease to use exclusively and to their full capacity machines leased or controlled by defendants, thereby prohibiting said manufacturers not only from using competing shoe machinery manufactured in the United States, but also from using any such machinery manufactured in foreign countries and imported here for sale or lease."

There is no proof that the United Shoe Company has enforced its leases in any arbitrary or unreasonable manner. On the whole, it seems to have been moderate with reference to such enforce-
1439 ments, and the number of cases in which anything in the way of a forfeiture has been demanded has been so small that, on looking over the great mass of the operations of the United Shoe Company, such enforcements have been so few as to be practically negligible; and there is no evidence that the duplicate parts, extras, and other incidentals furnished by the United Shoe Company have been sold at exorbitant prices fixed by it, or that the cost involved in the return of machinery has, in any way, approximated its original cost, unless, possibly, in some exceptional instances which have not caught the eye of the court. We do not think the case as developed has turned on these particular allegations.

It might have been expected in a proceeding of this importance, involving so many aspects, that the parties would not, at all times, have been in accord as to the pleadings of the United States. Referring to the allegation that the respondents "conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery," the utmost that the case can in any event be said to show is a purpose to acquire control of certain machinery connected with bottoming shoes, or later of certain clicking or eyeletting machines; and of this the United States became during the trial so far satisfied that it asked permission to amend the above allegation accordingly. On

the rules of equity pleading, however, which also are applied to some extent to pleadings at common law, an allegation of the whole field covers any part of it, and may be accepted as such without involving any variance.

Allegations such as the following, which run through these pleadings, color them all, and are to be accepted as controlling the entire bill, namely, "not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States"; "and intending unduly, unreasonably, and unlawfully to extend, expand, and perpetuate said monopolies and rights." The bill in the same line claims that the alleged confederates had, from the outset of the confederation, taken certain action described in the bill for the purpose of perpetuating the rights they had
1440 under existing patents after those patents should expire.

We are dealing now with allegations which seem to assert that the machines acquired by the corporation on its organization were covered by patents, and that its then purpose was to maintain this position, even after the then existing patents expired. This supports the proposition of the respondents that the machinery offered by the respondents was at all times protected by patents succeeding each other. At any rate, it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary. So that, for the purposes of this case, the machinery has been mainly, if not entirely, of that character.

To prevent possible misunderstanding of the position of the respondents in reference to the fact that the Shoe Machinery Company's machines are protected by patents, we repeat and accept what the respondents say, as follows:

"The extent and character of the rule of property established by the patent laws of the United States, under which this entire shoe machinery work from the very beginning has been carried on, is perfectly clear and definite. The industry has grown up under and has been based upon and made possible by the rights established by those patent laws."

The propositions thus quoted from the respondents are substantially supported by the record. It also may well be gathered from United States v. Winslow, 227 U. S., 202, that the United States, which were then free to put their case as they saw fit, thus put it with reference to the date of the organization of the Shoe Machinery Company, and thus gave it color which we are free to accept as abiding with the organization so long as effectual proof of change to the contrary was not furnished, as it was not. Under the circumstances of the case, this special observation is justifiable; notwithstanding, United States v. Winslow was a criminal proceeding,

because, no doubt, the natural presumption is that the United States made their case as they had reason to believe it to be. Indeed, it affirmatively and emphatically appears at various places in the bill, and it runs all through it, that all the essential interests
1441 which entered in 1899 into the combination forming the United Shoe Machinery Company were, at the time of the formation of that corporation, covered and protected by patents; and there has been no evidence that at any time in the history of the corporation there was any change from its original purposes.

It was at one time largely understood that the Supreme Court substantially held that all combinations of patents were outside the Sherman Anti-Trust Act. Bement v. National Harrow Company, 186 U. S., 70, decided on May 19, 1902, was thought to declare this view. In this case, at page 90 and sequence, some peculiar limited exceptions are referred to, as, for example, a statute requiring an inspection of burning oils and providing a penalty for its violation. The opinion then proceeds, at page 91:

"Notwithstanding these exceptions, the general rule is absolute freedom in the use or sale of rights under the patent laws of the United States. The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts. The fact that the conditions in the contract keep up the monopoly or fix prices does not render them illegal."

This impression was apparently strengthened by expressions in United States v. Winslow, 227 U. S., 202, 217. It is true this case also gave effect to the fact that, on the face of the combination of patents then under review, there was an effort for greater efficiency; but the opinion continues that the machines involved were patented, and it assumes that making them was a monopoly in any case and that the exclusion of competitors from the use of them was the very essence of the right conferred by the patents. Then the opinion refers back to the Paper Bag Patent case, 210 U. S., 405, 429. There it appeared that the patent in suit had been locked up by the complainant, its owner, and that the complainant had neither used it nor allowed anyone else to use it. There was neither lack of means nor any other excuse for locking up the invention, except the desire to protect other machines which the complainant was
1442 manufacturing. After some incidental explanations, the court there said: "As to the suggestions that competitors were excluded from the use of the new patent, we answer that such exclusion may be said to have been of the very essence of the right conferred by

the patent, as it is the privilege of any other owner of property to use or not use, without question of motive." What was said there was directly in issue.

But other late decisions of the Supreme Court seem to demonstrate that the cases we have cited do not state the whole law, but only lead up to the general rule, without showing how this general rule yields to exceptional circumstances. Moreover, this position does not give full effect to the second section of the Sherman antitrust statute, which covers "every person who shall monopolize or attempt to monopolize," as well as those who combine or conspire with any other person, or persons, to monopolize. Certainly in United States v. Reading Company, 226 U. S., 325, reliance was placed at page 358 on Swift & Company v. United States, 196 U. S., 375, 396, where a plan said to consist of many parts or elements was held to constitute a monopoly forbidden by the act. There the court observed that whatever we may think of the elements separately, when taken up as distinct charges, they are alleged effectively as elements of a scheme. It is true that in the Reading Company case there was an underlying combination among the principal promoters of what resulted; but we find there this recognition of what may happen where there is no such combination, given in the language we have cited from Swift & Company v. United States.

The case, however, that controls the present proceeding in this important aspect is Standard Sanitary Company v. United States, 226 U. S., 20, decided on November 18, 1912. There the opinion was drawn by the same learned justice who drew the opinion in the Paper Bag Patent case, so that we may assume that the two cases go along hand in hand. The opinion in the Standard Sanitary Company case refers twice to the opinion in the Bement case, once at page 40 and again at page 48. At page 48 it is said as follows:

1443 "There was a contention in that case that the contract of the National Harrow Company with Bement & Sons was part of a contract and combination with many other companies and constituted a violation of the Sherman law, but the fact was not established and the case was treated as one between the particular parties, the one granting and the other receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits. And there is nothing in Henry v. A. B. Dick Co., 224 U. S., 1, which contravenes the views herein expressed."

Thus the Standard Sanitary Company case and consequently the present proceeding were, and are, by express language distinguished from the Bement case, and the distinction thus made is that relied upon by the United States here, namely: Instead of dealing with one or more contracts between one or more parties, incidentally made

and having no relation to each other, we are dealing with a vast scheme which unavoidably affects the public interests. We need not elaborate other late decisions which indicate and enforce the proposition that a monopoly may be established in violation of the second section of the Sherman Antitrust act, conforming to the explanation of the Bement case which we have given, and without a formal combination; as, for example, United States v. Patten, 226 U. S., 525, 541 and sequence; United States v. Union Pacific R. R. Co., 226 U. S., 61, 85, 86; and Strauss v. Publishers' Association, 231 U. S., 222, at various points in that opinion. Therefore, in view of what we have said, it is necessary for us to go a step further and point out that we have here an organization, supported merely by a diversity of patents or machines patented in whole or in part, and inquire whether the alleged resulting monopoly is arrived at by injurious provisions contained in the licenses and leases referred to, which go beyond what the respondents might justly require.

We should now state generally that the United States claim that, while there are no contracts in form as between the different customers of the United Shoe Machinery Company, the matters are so tied together by the provisions of these licenses and leases, and ~~the~~ the scheme created thereby is so complete, as to have the same
1444 practical effect of producing the alleged monopoly which the statute prohibits, as though there had been agreements in a multiple form executed by the United Shoe Machinery Company and its various customers. They also claim that this results in a scheme such as we have already referred to. The allegations in this particular are for a large part of a very general character, and it may well be doubted whether the larger portion of them are not so general as to fail to require our attention according to the proper rules of pleading. Perhaps, however, on that score the variety and number of the leases, and of the various provisions thereof, are so great and the parties with whom the United Shoe Company have been dealing were and are so numerous, that it would be unreasonable to require the complainant to set out the facts in detail. We have, however, given the language of this part of the bill verbatim, and we can approach it with the general statement substantially in effect that there is nothing in the terms of the leases justifying any allegation indicating a purpose to enhance the cost of the machines to the users thereof, to wrong or oppress the public, or to impose any arbitrary, oppressive, or unreasonable terms.

The bill also alleges that these provisions are not found in the earlier leases and agreements existing prior to the organization of the United Shoe Company. Whether they were or not we regard as immaterial, except as excusing the respondents from any wrongful intention, because we agree with the United States in the propo-

sition that whether or not the conduct of the respondents is in fact in restraint of trade does not depend on the effect of any element considered singly, so that every element considered singly may be wholly innocent; but the question of an existing monopoly, or an intended monopoly, is to be determined by the effect of all the elements which are in fact combined.

The bill gives us no particular rule by which we can determine whether the provisions of the leases and licenses referred to are abnormal, or unjust, or unreasonable, nor where, nor how far, they are within the allowances which the law makes for the protection of legitimate trade and manufacture. We have nothing bearing directly on this topic except the apparent admission that the
1445 common provision contained in the leases and licenses, understood and called the "full capacity clause," standing alone, would be valid, and except also expressions like those found in Eastern States Lumber Association v. United States, 234 U. S., 600, 609, decided on June 22, 1914, summing up the previous decisions of the Supreme Court, that the Sherman Anti-Trust Act "in its proper construction" "was not intended to reach normal and usual contracts incident to lawful purposes and intended to further legitimate trade."

Nevertheless, we fail to find in the development of the United Shoe Machinery Company, and its operations, any support for the alleged charges in the bill of intended oppression, arbitrary conduct, or anything of that nature, especially so far as any allegations cover any attempts to destroy or cripple competitors. Looking at the great mass of facts proven in the case, and the immense number of transactions of the United Shoe Machinery Company, the evidence offered in that direction is so ineffectual that its weakness furnishes of itself satisfactory proof against what was intended to be established thereby. We find no evidence of what was shown especially in the Tobacco Company cases, namely, a purpose to destroy what could not be acquired by straightforward methods. The fact that the United Shoe Company has acquired so large a percentage of the business of the country to which it devoted itself comes so largely from the use of extraordinarily competent methods as to shut out from the eyes of the impartial investigator suggestions of other methods. So we lay aside that part of the case, and deal only with the proven facts, and the legitimate results of those facts, with little consideration, however, for any charges in this connection, or elsewhere, of intended oppression or unreasonable course of procedure, or of results which can be attributed to any unworthy motive. This, however, according to the well-known rules of law, does not necessarily relieve the respondents from what actually resulted from what-

ever they did, or from being responsible for these results so far as they might be expected to be foreseen.

The result of our consideration of what appears in the bill
1446 on this topic, and of the very general expressions found in it, and found in the authorities applicable hereto, have rendered necessary that we set out, as we will do with very considerable fullness, the claims of the respondents as to the nature and amount of the operations of the United Shoe Company, for the purpose of making clear the just amount of flexibility of the provisions of the leases and licenses as complained of by the United States, which should be regarded as applicable to what is admitted, or must be admitted, to be legitimate for the business of the United Shoe Company.

We may well call attention to some particular provisions in the leases and licenses, although they do not carry us very far towards solving the whole case before us. Among other provisions is one requiring lessees to use exclusively one or more classes of machines included in groups of machines, under penalty of having all the machines included in those of other groups reclaimed. The licenses also cover periods of not less than seventeen years, thus regardless of the unexpired terms of the patents relating thereto. Also they cover a requirement that the lessees obtain from the United Shoe Company all duplicate parts, extras, mechanisms, and devices used in operating, repairing, or renewing. With this there is an allegation that the parts can be obtained only at enormous prices. The record, as we repeat, gives us no definite rules for determining how far each of these provisions is legitimate or otherwise. It nevertheless appears that the prices for duplicate parts, and so forth, were never exorbitant, but that the contrary is true. Also it appears that, to a large extent, the requirement that duplicate parts, and so forth, should be obtained from the Shoe Machinery Company is for a large part reasonable. This and some other provisions may relate to the standardizing, and to continuous harmonious use of a long line of successive machines, for which standardization and harmonizing lie at the foundation, as they are the very life of some modern systems of production. Other allegations with reference to this topic are either frivolous or too general to support of themselves any practical results. Consequently, it becomes necessary for us to state the case more fully as claimed by the respondents, in order to attempt
1447 to furnish some tests as to how far provisions of the kind complained of are legitimate with reference to some portions of the business of the Shoe Machinery Company which everyone must admit it is entitled to pursue. The positions and peculiarities of the case are so extensive and novel that it is impossible to apply with any satisfaction any ordinary tests of what are reasonable and normal and what are unreasonable or abnormal requirements of the

leases or licenses, without a particular view thereof. The case in these respects, as stated by the respondents, has so many phases that the determination of what portions of the provisions of the leases and licenses are normal, legitimate, or reasonable as applied thereto is a complex topic, requiring much investigation, supported with great patience and care. What we now extract from the positions of the respondents in reference thereto is substantially supported by the record.

These extracts commence with the fact that the circumstances appearing in the well-known Standard Oil and the American Tobacco Company cases are so far unlike the circumstances appearing here that no particular assistance can be derived therefrom with reference to what conditions or requirements should be normal, legitimate, or reasonable here. The respondents say:

"This particular business of shoe machinery started about 1860 with the McKay sewing machine. There are men now alive who saw the first McKay machine, introduced about 1860. At the time the machine was invented by Lyman Blake there was not in a shoe factory a single machine outside of the sewing machine for stitching the uppers except a machine for making strips of outsoles and a knife organized into a frame which roughly shaped the outsole. There were a few crude pegging machines in use. There was not another machine, and shoes were made absolutely by hand. The business was insignificant as a whole even, and the individual units were most insignificant. McKay had $140,000 when he bought it. He thought that it was a perfect machine, but his $140,000 was gone before he was able to sew a shoe on it commercially. And that is the history of all these machines. They have been most expensive in their development. One unexpected failure after another has broken the hearts of the inventors and promoters before success was attained."

1448 "Then came the Civil War, and the demand for shoes for the soldiers was such that the McKay machine was able to get a start which otherwise it might not have gotten."

"At the moment when McKay started to put this machine out Elias Merwin and McKay together invented for this business the royalty system, and that system has prevailed throughout the shoe-machinery business from the beginning. It was a system of leasing machines, adopted in order that the shoe manufacturers might be induced readily to take the machines. Because in the case of each new machine it was all an experiment, the shoe manufacturers did not dare to take such machines and invest their capital in them. They did not have the capital to invest. This policy was satisfactory to the last degree, and from McKay's time to the present day the royalty and lease system has been the prevailing and characteristic

method of the shoe-machinery business so far as the great variety of elaborate and refined machines which have followed the first McKay machine are concerned. One thing which the Government asks in the case is that the leasing system which has prevailed from the start in this industry should be destroyed. If the court should declare illegal, as the United States ask it to do, the protective clauses in our leases which we have put there to make the system safe and practicable, the leasing system would have to go."

"There are two important aspects, at least, in which this shoe-machinery business is unique. One is that in every single step in this business up to the point where to-day we are building 350 machines, the machines have been patented machines, always patented and likely to be patented for an indefinite time in the future—because this art is not yet exhausted. Thirty-five millions of dollars of the property of the Shoe Machinery Company is in the hands of these shoe manufacturers. It finances them to that extent. It keeps those machines in repair, so that the shoe manufacturers have no question of maintenance; no cost of maintenance to deal with. It sees that information calculated to make the operation of the machinery more effective is collected and disseminated throughout the factories. The shoe manufacturers who deal with our company do not have to be on the watch to get the best possible machines. They know that the defendant will supply them with the best. They know that their machinery is the best in the world, and that, if
1449 better is devised, they will surely have it. There is nothing for them to look after except the question of labor, the purchase of material, the design of their goods and selling them. It is with this business, not with any other, that the court has to determine whether what these respondents have done, what contracts they have made, have been in the normal, orderly, natural line of development."

"McKay had his lasting machine; Thompson had his lasting machine; soon Copeland came along with his lasting machine; all patented; and the impression right straight through of those working in this art who were most intelligible was this, that you might do many things with machinery in shoe manufacturing, but you never could last by machinery, because you are dealing with leather, which is a most difficult thing to deal with. It is so expensive that every scrap should be saved and none injured. No two adjacent centimeters of leather are the same in character and condition. In flexibility and capacity for stretching no two spots are alike; the surface character constantly varies; and yet you must make a finished shoe without waste or loss and as perfect as possible, and the two shoes of every pair must be perfectly matched. It was the general belief that the lasting machine was an idle dream."

"But the lasting machine has come; and so has every other machine that was required in this industry. The 150 processes that are employed in making shoes are all done to-day by machinery. It is only a short time ago that there was some talk about cutting out the uppers; men said that you never could do that. Human intelligence seemed absolutely essential for the work. Now we have a machine that doubles the efficiency of the human operator in cutting or dieing out the uppers, and does it much better. This is the clicking machine."

"Moreover, the No. 5 laster of to-day is of such a character that the Ideal and the Chase of 1899 are practically obsolete machines. The welter and stitcher of to-day are enormously more useful, efficient, and economical than those of 1899, as the record shows. The rough rounder has been perfected. And so it goes right straight through with every machine in use in 1899, as to all of which there have been a long line of patented improvements, one succeeding another at frequent intervals, everyone of which does something that previously was done by hand, or was not done at all. So that to-day you have a completely developed organization of machinery
1450 adapted to the manufacture, under the most favorable conditions, of the shoes that the public require. If the requirements change, the machinery is at once changed to meet those new requirements, and there has been a continuous and large gain in economy and efficiency.

"We talk chiefly about the welt shoe, because that is the most important shoe of all and the one to which our business most largely relates. There were only 17,000,000 of them made in 1898, or less than 10 per cent of all shoes made. In 1910 there were made over 86,000,000 pairs, and the proportion of welt shoes to all shoes made has been steadily increasing. And why this increase? Because we have given to the shoe manufacturers, between 1899 and the present time, better machines and radically new machines, which enabled them to make those shoes successfully and at a low cost. We are solely responsible for this entire development. The whole credit of it belongs to us.

"Now, it is not unreasonable to look at this complex and complete shoe machinery system in this way. Take a screw machine. There there is an organization on one frame which feeds the bar, cuts off the right length, puts in the screw thread, makes the point, makes the head, and cuts the slot in the head, thus making a complete screw. The manufacture of a shoe in a modern factory is practically a unitary operation, like the making of a screw; every one of the many steps being coordinated to the others, as if all were taken in a single machine. Everything is aimed at one product, and every single machine is definitely related to the machines that follow it and to the

machines that are back of it. These machines that we have talked about as being classified into 'departments' cover sometimes machines of one department 'tied' to those of another; yet, there is no consecutive relation of one department to another in the order of use of the machines in making a shoe, but you start in with one machine from department 'A,' and take the next from department 'D,' and then one from 'C,' and then one from 'E,' the result being that, when you get through, they have all been interwoven, and the sequence worked out, not department by department, but one machine after another, in any order as far as the departments are concerned. That is, the whole is a continuous process, aimed at one unitary result; and each of the machines, whatever the distribution among the different departments, is organized to succeed the prior ma-
1451 chine efficiently, and to prepare the shoe for the next machine. Any one of the machines may spoil a shoe; and the result is that one of the great problems of this art has been to organize each machine so that not only will it do its work without injury to the shoe, but that there will be no difficulty when you come to the subsequent machines. The work of each machine must be done so that the next machine will work with the required accuracy."

That the whole system thus described, past and present, is, and has been, supported and covered by patented machinery, is shown by the extracts we have already made in that connection.

What we have submitted about the leasing system, and the propositions of the respondents which we have cited, and which cover so large a field, constitute an organization so successful in its operations, continuing so long a time, and so harmonious in its major parts, that anything which would bar out provisions in the leases and licenses necessary to the maintenance thereof must be admitted to be injurious to the manufacturers of shoes, as well as to the manufacturers of machinery, with regard to what each justly desires to accomplish. However, the numerous provisions prevailing in a very considerable variety of leases and licenses, in a very considerable variety of forms, involve so much investigation and so much study that that investigation and that study should not be claimed or expected from any court of justice as primary work, and it should first be taken in hand by a master. This proposition, moreover, is enormously enforced by the systems of standardization, and of other special peculiarities, involved in the enormous work of repairs, and incidentally of supplying parts, which the Shoe Machinery Company is now accomplishing at important but distant parts of the United States, at an annual expense said to be in the employment of over 600 men, giving their services exclusively thereto; and all to the unqualified satisfaction and the very great saving of time and

expense of the shoe manufacturers' industry. The better practice is to refer all such matters to special masters.

In this connection we make no special reference, and have come to no conclusions, in regard to the effect on the pending case of
1452 the legislation of Congress enacted since this case was submitted to us, nor with reference to the question whether or not the rights of the parties affected by this legislation would require supplemental pleadings. All such matters would primarily be a part of the special master's finding, if appointed.

We are brought next to a series of independent transactions on which the United States rely, relating to the acquisition of, and control by, the United Shoe Machinery Company of certain businesses, alleged to have been acquired for the purposes of destroying competition, and thus extending the monopoly alleged in the bill, and covering various periods from March, 1899, to the time of trial, amounting, by the schedule given us, to something more than fifty instances. Some of these on their faces are only "efforts after greater efficiency," as suggested in United States v. Winslow, 227 U. S., 202, 217, already referred to. Those that remain which are of any consequence are connected with the acquisition of patents, either directly or indirectly, and are covered by what we have already explained. Of this latter class, so far as we can understand it, is the acquisition of the capital stock of the Goddu Sons Metal Fastening Company. This case is worthy of being treated as a typical one. The transaction occurred in March, 1899, the month after the United Shoe Machinery Company was formed, and more than eleven years before this bill was filed. It related to patentable inventions for metallic fastenings. This transaction seems to be disposed of by the general propositions we have already laid down about patent rights. It also involves a complaint several times made that the United Shoe Machinery Company has taken agreements from inventors barring them from competing with it; but such agreements are legitimate in connection with sales so far as they run parallel to the sales, or wherever they avoid unnecessary competition. The law on this point, within this generation, has been extensively altered and broadened, so that now covenants of this kind may be taken coextensively with the breadth of the trade bargained for in connection with them. So far as we have been able to discover, the various agreements of the character spoken of, and included in the prosecution, have been
1453 no broader than the law now allows. There may be some minor exceptions, but they have not been brought specifically to our notice.

We come now to the transactions with Thomas G. Plant as alleged in the bill. The real life of this transaction is in what we have said about the patent rights involved here, and about the provisions of the

leases and licenses. Without those it would be impossible to construct any case of restraint of trade under the Sherman Anti-Trust Act mapped out by the bill we have before us. Without them there can be no illegal structure whatever. All the property, including that acquired from Plant personally, covered by these matters has been broken up and lost sight of as an entity, except only the shoe manufacturing business, the control of which was acquired by the control of Plant's shares of stock in the T. G. Plant Company, while the shoe manufacturing business is not within the purview of this prosecution because there is no claim of a monopoly acquired in that occupation. Whatever else was acquired from Plant was either patented machinery, or patents, or inventions which stood for incipient patents. So much, therefore, of the propery acquired from Plant, except the shoe manufacturing business property, is subject to what we have already said about patents, and the provisions contained in the leases and licenses we have referred to, incidental thereto. Moreover, as to all of these incidental matters, the learned counsel for the complainants said as follows:

"The leasing system in and of itself is not a violation of law, the acquisition of competitors was not a violation of law—the threats and intimidation of competitors did not constitute, in and themselves, a violation of law—but when all of these things are taken together they form an unlawful plan—therefore the plan will make the parts unlawful; so that if we started in 1899 with a lawful combination and that combination is used to build up a monopoly, we see no reason why the court can not go back to the original combination, and separate it for the purpose of restoring competitive conditions, because that combination has been used as an instrument for monopolizing the business."

This can justly be construed as a proper admission that the
1454 subject matters submitted by the bill are to be taken substantially as a whole; so that, if the fundamental matters which lay at the foundation on which the structure was intended to be built, go out, the whole goes out. The court is not called on to reconstruct what was intended to be built by the United States if the most essential parts of that structure have disappeared. It is well to observe that, to a stranger, the transaction with Thomas G. Plant seems a very large one; but, as compared with the manufactured product of some of the witnesses who testified in the case, it was a minor thing; and particularly so when compared with the product of 86,000,000 pairs of welt shoes in 1910, and as compared with the great transactions to which this prosecution relates.

There have been many unthinking criticisms of the respondents in this case, both Federal and State, some semiofficial, and some personal, and therefore irresponsible; but the conduct of this long and

laborious trial before this court has been a model for those who witnessed it. It has been conducted with extraordinary persistency and ability, but with fair and open hand, and constantly with that courtesy due the counsel and this tribunal.

The court having carefully considered the pleadings of the parties and their evidence, and heard the counsel, it is ordered, adjudged, and decreed that the bill of the United States herein be dismissed.

1455 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA
v.
UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, and others. } In Equity, No. 301.

[March 18, 1915.]

DODGE, J.: 1. United Shoe Machinery Company, of New Jersey, organized early in 1899 by consolidation of the properties and business of several constituent companies, is charged to have been formed in violation of the antitrust act.

This claim is based on two alleged grounds—(1) that it destroyed competition between the component companies, (2) that it was brought about with an unlawful intent on the organizers' part to destroy such competition and to use the consolidation as a step in carrying out an unlawful project formed by them to acquire a monopoly. (Petition, pp. 18, 80 of record.)

Has the United States proved that such destruction of competition resulted from the consolidation as made it a combination in restraint of trade? Taking the facts to which the evidence relates in order of time, this is the first question presented.

The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in "any and all kinds of shoe machinery," i. e., in shoe machinery generally.

But it appeared early in the trial that no such charge could be proved, because neither the business of the component com-
1456 panies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to "all kinds of shoe machinery." Both were always limited to certain kinds only. This was finally conceded, and the field of trade in shoe machinery with which this case is concerned limited by concession of the complainant's counsel to machines of the following kinds: (1) Lasting or "pulling-over" machines, used for adjusting and attaching the upper of a shoe in process to a last; (2) machines for preparing bottoms and heels and fastening them to uppers; (3) machines for finishing bottoms and heels after they have been so fastened; (4) eyeletting

machines for inserting eyelets in uppers; (5) "clicking machines" for cutting out uppers. The "shoe machinery" as to which restraint or monopoly is charged, therefore, includes machines of the above kinds only, for the purposes of all questions hereinafter considered. It is to be noted that such machines are insufficient for the making of a complete shoe, and that no attempt to control machines for stitching uppers is charged.

We are concerned only with the first three of the above classes, so far as regards the above consolidation in 1899. None of the constituent companies then made or dealt in eyeletting or clicking machines. These originated with the United Company. It introduced and developed them later on, at different times during the development of its own business after 1899. Its eyeletting machines wer first produced about 1902; its clicking machines in 1908 or 1909.

The United Company was formed February 7, 1899, taking over, in exchange for its own stock, or for cash, or both, the business and property of each of the following concerns: Goodyear Shoe Machinery Company and International Goodyear Shoe Machinery Company (both in the same line of business and hereinafter together called Goodyear Company), Consolidated & McKay Lasting Machine Company (hereinafter called Consolidated Company), McKay Shoe Machinery Company (owning and controlling Davey Pegging Company and hereinafter called McKay Company). From money obtained by issue and sale of other shares of its own stock it bought in March, 1899, the stock, business, and property of the Eppler
1457 and International Eppler Welt Machine Companies. These, though strictly acquisitions of the newly formed United Company, after its formation, may, for the purposes of the present question, be regarded as constituent companies.

To allegations found in the petition (p. 18) that the business and property of the Goodyear Company, the Consolidated Company, and the McKay Company were taken over by the United Company "at values far in excess of real worth," reference is made at this point only in order to state that no proof of any kind was offered in support of them, it was not argued on the petitioners' behalf that they were true, and they therefore require no further notice for any purpose in the case. There can be no doubt that each concern had an established business already of great value and possessing great possibilities of development, or that each also owned patents and property of very great value in connection with its business.

Up to the time of their union each constituent concern had been dealing, generally speaking, in a line of shoe machinery for the most part distinct from that dealt in by the others. Thus the Goodyear concern's business had been that of making and dealing in welt-sewing and outsole-stitching machines and auxiliary machines for

use therewith, all designed for the manufacture of Goodyear welt shoes; also one kind of lasting machine, called the "Ideal," designed for lasting women's welt shoes. The machines of the Consolidated concern were lasting machines of three kinds, designed, respectively, for lasting men's welt shoes (this was called the "Chase"), heavy metallic fastened or pegged shoes, and McKay sewed shoes. The machines of the McKay concern were heeling machines, metallic fastening machines, and Davey pegging machines. The Eppler machines were welt-sewing machines and certain auxiliaries therewith used in making welt shoes (not Goodyear welts). After the union the United Company proceeded to make and deal in all the above machines.

It is here to be noted that the Goodyear welt method is only one of several methods of uniting the upper and sole of a sewed shoe.

This method was from the outset in direct competition with
1458 the McKay method, and it has so continued until the present time. The Eppler welt machine was for doing the same thing by still another method. As the McKay method is and has been open to all the world, shoe manufacturers are and have been always able to obtain machines for sewing uppers and machines (i. e., McKay sewing machines) for attaching bottoms to uppers independently of the United Company or any of its constituent companies.

The various machines produced as above by each constituent concern were, as the petition alleges (p. 15), all made "under letters patent of the United States and of other countries." The patents belonged to the respective concerns and covered improvements from time to time embodied in each machine during the course of its development by the concern producing it. Each concern had so far developed and improved its own machines that they were in 1899 the machines principally in use by shoe manufacturers throughout the United States in doing the respective kinds of work for which each was adapted as above. All the patents referred to passed by the consolidation to the United Company. Each concern had further improvements upon its machines under trial, and all the rights in these inventions also passed to the company.

The combination was not unlawful so far as it did no more than put the different groups of noncompeting patented machines into one control. U. S. v. Winslow, 227 U. S., 202. It was not unlawful unless, to an extent injurious to the public interest, it destroyed competition. In support of the charge that there was such destruction of competition, the United States contends that before the combination (1) the Goodyear Company and the Consolidated Company were competing in lasting machines, and (2) the Goodyear Company and the Eppler Company were competing in welt-sewing machines.

Unless the termination of such competition as existed between these concerns in respect of these machines made the combination unlawful, it was not unlawful because of any destruction of competition involved in it.

(1) As to the alleged competition in lasting machines, it is not claimed that there was any, so far as two of the three kinds
1459 made by the Consolidated Company are concerned. These are the "McKay-Copeland" laster for lasting heavy metallic fastened or pegged shoes or brogans and the "hand method McKay" laster for McKay sewed shoes; and neither of them could be used to last welt shoes, for which purpose alone the Goodyear Company's "Ideal" laster was adapted. The only question here is whether the latter machine can be regarded as competing with the remaining laster of the Consolidated Company (the "Chase"). With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed.

There is no proof of any actual use of the "Chase" laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The "Ideal" laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof men's shoes are made. The proof relied on to show that it competed with the "Chase" went no further than to show that a number of "Ideal" machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented "hold down attachment" added by the United Company to the "Ideal" in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines.

1460 (2) As to the alleged competition in welt-sewing machines, the question is to what extent the Eppler welting machinery can be regarded as competing with the Goodyear welting machinery.

Outside of that produced by these two concerns, no other welting machinery appears to have been on the market at the time.

The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them.

Nor, if such competition as is shown to have existed between the "Chase" and the "Ideal" laster be taken together with that shown to have existed between the Eppler welting machinery and the Goodyear welting machinery, do I find it credible that the avoid-
1461 ance of both amounted to a consideration of any substantial importance, so far as the formation of the United Company was concerned. No reason appears for supposing that the real purpose for which the constituent companies were brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company. (Petitioner's Exhibit 152.) This dwelt upon the advantages to be secured by putting into one control "the most efficient types" of shoe machinery. In U. S. v. Winslow, above cited, which was decided more than a year after the present bill was filed, it was

said that the combination here in question was, on its face, "simply an effort after greater efficiency," and the legality of combination for such a purpose is fully recognized.

Under their respective patents upon the "Chase" and the "Ideal" lasters there was litigation pending in 1899 between the Consolidated Company and the Goodyear Company, each claiming that the other's machine infringed its patents. Also, under the patents covering their welt-sewing machines there was similar litigation pending between the Eppler Company and the Goodyear Company. A result sought to be attained by both parties to these controversies, and accomplished by them through the acquisition of all the patents by the United Company, was the termination of all this litigation. Reference is made below to other later acquisitions by the United Company, an important feature of which was that litigation, troublesome and expensive on both sides, was avoided or terminated. In so far as any of the defendants' transactions were in order to accomplish results of this kind, it can not be said that their purpose was unlawful.

For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts
1462 under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility.

2. Coming next to the question whether or not it has been proved that the United Company was formed with an unlawful intent on the part of its organizers to destroy competition in the future and use the consolidation they then effected as a step in carrying out an unlawful project to establish a monopoly, we are brought to the consideration of the acts and doings of the United Company, or of the other defendants through its means, from the time it was formed until the filing of this petition in December, 1911. It appears that the United Company itself and what has been done in connection with it during that period has been under the control, speaking generally, of the same defendants who brought about its formation in

1899. Of their actual intent in forming it and in taking the various steps which they have taken as above in connection with it, there is no direct proof overcoming their denial that it was such as the petition charges, and no way of judging except from the necessary results of all the steps proved to have been taken by them, as a whole.

But it is important at this point first to determine how far certain allegations of the petition, which characterize the defendants' alleged project and their motives for forming it, have been sustained by the evidence. These are found on pages 15 to 17 of the record, and they are, in substance, that the component companies were in 1899 manufacturing their respective machines and parts thereof under patents: that "many of the basic patents on the principal machines were about to expire": that their manufacture
1463 and use was thus about to become open to the public "in the near future," and that the defendants, not being satisfied with the rights they had enjoyed under the patents and intending to expand and perpetuate them to the public detriment, devised the alleged project of acquiring a monopoly which the petition thereafter describes.

This trial began on May 20, 1913. On June 27, 1913, the petitioner, having introduced substantially all its other direct evidence, stated that it desired to offer proof in support of the allegations just referred to, but was not then prepared to go into the matter.

By consent, an order of reference to a special examiner was thereupon entered (pp. 262 T. 1996) for the purpose of taking such evidence as either party should offer regarding those allegations, out of court. Such evidence was required to be completed by October 11, 1913, but successive extensions of the time were afterward found necessary and allowed by consent. Before the examiner the petitioner did not complete its direct evidence until October 6, 1913, and the evidence on both sides was not completed until November 19, 1913.

At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

Nor can it be said that they have been sustained by the evidence before the examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as "basic," in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively.

The petitioner's final position, indeed, as to what was proved by the evidence before the examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on
1464 as "basic" patents, became free to anyone to make or use—without any of the patented improvements added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings. The effect of the evidence and of the petitioner's argument is to show that Goodyear machines of the old type are capable of commercial use and could have been made by anyone who chose to make them. That after the expiration of the two so-called basic patents machines constructed according to them were not used is sufficiently accounted for by the superiority of the newer machines which the defendants had introduced. For that reason the older machines did not enter into competition with them, and the defendants can not be charged with suppressing such competition.

3. The combined business of the component companies as conducted and developed since 1899 by the United Company, related most largely to the machines used in producing welt shoes. The use of such machines (and thereby the production of and demand for such shoes) is shown to have been very greatly promoted by patented improvements made upon the machines of 1899 by that company, greatly increasing their efficiency and capacity, and by improvements effected by that company since 1899 in the methods of manufacturing them. It appears that the total number of welt shoes produced in his country in 1899 was about 17 million pairs; in 1910 about 86 million; the total production of all kinds of shoes increasing during the same period from about 175 to about 280 million; the Goodyear welt shoes being all this time in direct competition with the McKay sewed shoe.

It is further shown that the above improvements in the machines and their manufacture were accomplished by means of constant investigation, experiment, testing, and invention by competent experts employed by this company, involving a very large expenditure on its part. These efforts were directed not only toward
1465 making each machine as efficient as possible by itself, but also toward increasing its efficiency for so performing its own operation upon a shoe as best to combine it with the work upon the same shoe by the numerous other machines required for performing the remaining necessary operations, in order that all the many suc-

cessive operations performed should cooperate toward the most economical and efficient accomplishment of the best final result in product. And besides thus developing and improving the machines of 1899, the company kept pace with the requirements of manufacturers by the invention and production of many other machines or improvements, unknown in 1899, as the need for them became apparent.

There is no question that the above-described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufaturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.

It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success.

No support is found in the evidence, for the charge in the petition (Par. X) that "enormous and unreasonable profits" have been made.

This allegation is made in connection with and apparently
1466 depends upon the allegation of which, as above stated, there is no proof, that the properties combined in 1899 were taken over at excessive valuations. Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production.

If there is any sense in which the result attained as above can be called a "monopoly," it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing or attempting to monopolize within

the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated. As has been said, the field they have occupied is a special field, and the product for which their machinery is adapted is of higher price and quality than the product of the machinery of others.

The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases can not justly be applied here. In so far as the defendants' occupation of
1467 the field has been due to the greater desirability of their patented machines and to the superiority of their methods of making and supplying users with such machines, no reason appears for holding it unlawful, whatever its extent.

Supplementing the production and development of its various patented machines, methods introduced by the United Company for keeping them in efficient operating condition while in the hands of their various users throughout the country have most effectively aided the development of its business. It has undertaken not only to train operatives in the proper use of the machines and to secure the prompt repair of any machine disabled in use, but also to supply each user from time to time with the latest improvements, either by adding them to the machines or by substituting improved for superseded machines, without extra cost to the user. This service it has furnished by maintaining at central points bodies of competent employees who attend to the above matters whenever and wherever they are notified by users that such attention is desired.

A system of standardization, introduced since 1899, whereby corresponding parts of the various machines have been so constructed as to be interchangeable whenever possible, has, in connection with the service furnished as above, effected a great reduction in the time lost by machines in waiting for repair. The introduction of such a system could not have been effected by the component com-

panies because each carried on the manufacture of its machines at a different place. While each of them rendered to its users some service of the character described, this was done to a limited extent only, and the maintenance of any such system of rendering it as the United Company has pursued would have been impossible to them because of the heavy outlay involved.

The service secured to users of the machines by the system just described has been furnished to users without charge in addition to the royalties paid by them under the leases of their machines. For duplicate parts, extras, etc., required in operation, repair, or renewal, the terms of the leases required payment. Allegations in the petition that exorbitant prices were charged for such duplicate
1468 parts, etc., were not sustained by the evidence, and have not been insisted on in argument.

That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason.

So little room for doubt does the evidence leave that the success and preponderance referred to are the natural and legitimate result of the intrinsic merit of the patented machinery and service furnished as to require clear and convincing proof of any assertion that they are due to causes other than these. It can not be said that of themselves they justify any such presumption that unlawful means have been resorted to in attaining them, as has been held to exist when, in a business whereof no lawful monopoly is possible, because it is normally open to all, the success of one competitor has been attended by the disappearance of such competition as previously existed.

4. The petition charges the United Company with acquiring and absorbing the business of sixty different concerns or persons, described as "competitors," in pursuance of their alleged unlawful scheme, and as one method whereby what is called its "monopoly" has been built up. The nature and circumstances of these transactions are next to be considered.

As to one of these concerns (Boston Blacking Company), also made a defendant in the case, the charge was withdrawn early in the trial and the petition dismissed by consent so far as it is concerned. (Record, p. 261A.)

The petition has also been dismissed as against two other concerns also made defendants (J. C. Rhodes & Company and
1469 Thomas G. Plant Company)—though the charge regarding the acquisition of their business is still urged against the remaining defendants. The transaction involving the concern last mentioned requires consideration by itself. The fifty-eight remaining charges of unlawful acquisition may be more generally dealt with.

The fifty-eight concerns or individuals referred to made transfers to or agreements with the United Company at one time or another during the years 1899 to 1910, inclusive; and the transactions related more or less immediately to shoe machinery in general if the term be taken in its most inclusive sense. So far there is no dispute.

Eleven of the transactions were at various times in 1899; eight in 1900; six each in 1901 and 1902; three each in 1903, 1906, and 1908; nine in 1904; one each in 1905, 1906, and 1909; five in 1910. Though thus extended through a period of years, and though widely varying each from the others in character, both in respect to the nature of the transaction itself and also regarding the circumstances attending it, the petition sets them forth as if all had been in pursuance of one and the same scheme; there described as a scheme to control shoe machinery in general, though now called a scheme only to control the particular classes of shoe machinery before mentioned.

The nature of some of these acquisitions may be regarded as enough of itself to prevent them from being called indications of a purpose to control any of the particular classes of machinery now important, however it might have been were the scheme now asserted the one originally alleged for controlling all shoe machinery in general.

This seems clear in the cases where the business of concerns engaged in selling sandpaper, or in making patent brushes, or in making peg wood, was taken over; and hardly less clear, without further evidence, in the cases where the business acquired was making wire and spare parts for use in an obsolete metallic-fastening machine, or making treeing machines and parts thereof, or making needles, awls, and rawhide mallets, or making nails and tacks, or dealing in
1470 cement, blacking, and second-hand sewing machines, or making metallic heels and counters to go outside the shoe whereon they were used.

The business of four of the concerns acquired is described in the petition as that of making eyelets, enameled or not. Neither is alleged to have been making any eyeletting machine. The eyeletting machinery wherewith we are concerned, however, has been repeatedly described by the petitioner as machinery for inserting eyelets in

uppers; i. e., such as the machine first leased by the United Company in 1902.

To the cases wherein inventions or machines for pasting outer leather to linings or for cementing fabric to uppers were acquired little significance can be given, in view of the petitioner's abandonment of the claim of any scheme to monopolize machinery for producing uppers.

In several others of the transactions specified there was no acquisition of any tangible property whatever. These consisted of contracts only, either contracts for employment by the United Company or contracts in which undertakings by it were accepted in substitution for obligations previously assumed by one of the component companies. In none of these cases is it made to appear that the party contracted with was a "competitor" in any kind of shoe machinery, or that the business of any such "competitor" was "absorbed."

There remain a number of instances involving the acquisition of patent rights, patents, or machines relating to or capable of being included within some of those kinds of shoe machinery whereto the case is restricted as above. In the larger portion of these the device or machine acquired is shown to have been of a kind not then being produced by the United Company. There being nothing unlawful, as above stated, in the acquisition of different groups of noncompeting patented machines, it is clear that by such enlargements of the United Company's field of operation no "competitor" can be said to have been absorbed or driven out of business, and that no reason appears for holding the acquisitions thus made unlawful either in themselves or because made in furtherance of an unlawful purpose.

1471 The instances then remaining in which the United Company was at the time producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended, are the only ones capable of being regarded as of any possible significance for the purposes of the petitioner's case. In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding in rendering commercially successful.

No case, however, is found among the acquisitions of the character last described wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the con-

clusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished. In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a "competitor's" business has been proved.

The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It can not be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became
1472 manifest and these opportunities presented themselves, they were availed of.

Taken together, the acquisitions of this class are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used. Thus in the case of the Goddu Company, the first instance of alleged unlawful acquisition specified (p. 28), the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines. In not a few of the cases specified the patent or machine, being wholly experimental when obtained, proved an ultimate failure so far as commercial success went, not-

withstanding much time and money expended in the attempt to develop it.

It further appears that, during the same period of time the cases wherein the business of a concern producing shoe machinery was offered to the United Company and refused by it were far more numerous than the cases of acquisition specified by the petitioner. As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. The cases in which inventions were offered and refused during the same period were many times
1473 more numerous than the patents or inventions acquired. If a monopoly of all machinery for attaching bottoms to uppers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of the unpatented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind.

The petition charges generally that covenants in writing were taken from substantially all those whose business was acquired as specified, (1) not to engage for long terms of years in competition with the defendants in commerce in shoe machinery, (2) to convey all inventions or patents in shoe machinery which they might make or acquire during such terms to the defendants.

These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company.

An allegation in the petition that the business of many competitors was bought at exorbitant prices, fails of support in the evidence relating to any specified instance of acquisition among those
1474 thus far considered. As to them, indeed, no claim of the kind seems to be seriously urged.

5. The acquisition in September, 1910, from Thomas G. Plant, consisting principally of a large number of patents, or applications therefor, relating to shoe machinery—machines embodying those inventions and Plant's controlling interest in the stock of the Thomas G. Plant Company, a shoe manufacturing concern, is the most important in amount of the acquisitions specified, and the one most relied on by the petitioner.

According to the petition, Plant was a competitor of the defendants, and they acquired his business in pursuance of their unlawful purpose.

The evidence does not show Plant to have been a competitor in the ordinary sense. He was not carrying on any going business in shoe machinery. He was neither producing his machines nor supplying them to users upon any commercial scale, nor was he prepared so to supply them, though he had issued an illustrated catalogue of them. The petition alleges that he had been inventing and patenting his improvements for at least two years before 1910. In one factory only were machines embodying them being operated; this belonged to the Thomas G. Plant Company, whereof he owned a majority of the stock. He installed them there in May, 1910, displacing the United Company's machines previously used there in order to do so. Before he installed them there, he had offered to equip two other factories with them without requiring royalties for their use, but these offers had been declined.

There is uncontradicted evidence of declarations by Plant in 1909 that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants. These, set on foot by him and at first stopped by the defendants' unqualified rejection of his proposals, he persisted in renewing, through various intermediaries, until they resulted in the purchase above described. It appears
1475 without contradiction that Plant was for a time under agreement to pay an influential shoe manufacturer, whose assistance he procured, $250,000 if he succeeded in bringing about the desired sale; also that he later offered and ultimately had to pay a commission of five per cent on the price obtained to another intermediary who undertook to put the transaction through for him.

The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else: but that, on the contrary, all the efforts toward such a purchase were made by him. The first overtures toward it came from him: he began them soon after he had put his machines into the Plant factory: they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants.

Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation: for that purpose several important machines were yet to be developed. In the state in which the
1476 United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were "right at the threshold of extensive competition with the United Company."

The petition alleges that a group of shoe manufacturers were in conference with Plant, in Boston, in September, 1910, "with a view to purchasing an interest in his inventions and machines, or to make some arrangement which would enable them to obtain machines for use in their factories and thereby be relieved from the domination and control of defendants." It further alleges that the defendants were "advised of the purpose and intent of said manufacturers," knew that if they succeeded in making arrangements with Plant there would be further removal of their own machines and competition thus created, and agreed with Plant upon the purchase made from him, in order to prevent such competition.

But the evidence fails to support these allegations. It does not charge the defendants with any knowledge, at the time they came to terms with Plant, of any negotiations between him and the manufacturers referred to. No reference appears to have been made to them or their doings during the defendants' negotiations with Plant, and no reason is found to believe that apprehension lest he might conclude some arrangement with them induced in any degree the defendants' final agreement with him. Were it important, it might be added that so far as the evidence can be said to show anything regarding Plant's intentions toward them, it shows that he never really meant to enter into any arrangement with others if he could get the defendants to take off his hands everything which he desired to sell; and no purchase so extensive as this appears to have been at any time contemplated by the manufacturers mentioned in the petition.

The terms finally agreed on with Plant were so much more favorable to the United Company than any he offered when he first approached them, and so inconsistent with his previous attitude toward them, as to leave no reasonable ground for believing that the defendants had ever sought, expected, or planned for the transaction
1477 as carried out. And in what they were thus unexpectedly enabled to acquire from him, there was included so much that was plainly of far greater consequence to them than could have been the avoidance of such competition as they can reasonably be supposed to have apprehended from his incomplete and undeveloped line of inventions—patents and machines also included—as to leave no sufficient ground for believing that avoidance of competition was their principal motive in accepting the opportunity offered. The normal, natural, and obvious business reasons, of wholly different kinds, why they should accept instead of refusing it, appear to have been so complete and sufficient as to render the conclusion unreasonable that it was accepted in order to escape competition.

Six million dollars, half in cash and half in United Company common stock at twice its par value of $25, was the price finally accepted by and paid to Plant for everything acquired from him. In the transaction no separate valuation was set by the parties upon the inventions, patents, and machines transferred distinct from that of the controlling interest in the shoe manufacturing establishment. That part of the acquisition is, of course, beyond criticism so far as the antitrust act is concerned. That it was of great value is shown beyond question by the dividends then and afterwards paid on the stock acquired by the United Company. These and the ultimate disposition of the stock itself afford every reason to believe its actual value when acquired sufficiently great to reduce the actual cost of the patented improvements also acquired to a comparatively small

proportion of the total payment made to Plant. Taking the transaction as a whole, if the total amount paid by the United Company was large, the total value of all that was received in exchange also appears, not as matter of opinion merely, but by actual results shown, quite sufficient to negative any claim that the defendants paid an exorbitant price for what they got.

The evidence that among these patented improvements obtained from Plant there were enough of sufficient value, in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition
1478 extremely profitable to the United Company was not met by any sufficient proof to the contrary. The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition can not be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase.

The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned.

A suit by it to restrain the Plant Company from breaking the leases of its machines, displaced in order to instal the Plant machines as above, had been pending since May, 1910. And between Plant or concerns wherewith he was identified and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated, and important as to threaten interminable controversy.

It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him can not be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid.

The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must

have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion
1479 to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. The competition threatened by Plant and his efforts to induce the defendants, in order to avoid it, to buy his machines and patents by themselves were wholly ineffectual. They met with nothing but refusal on the defendants' part to consider his proposals. It was not until he offered, through the intermediary he last employed (Smith), the shoe manufacturing business of the Plant Company as well that the defendants consented to deal with him.

While it may have been his plan to realize a profit by threatening competition, it was not until this proposition, based upon tangible property of substantial value and of patent rights, was made, that any sale was effected. The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay $6,000,000, or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely.

6. In paragraph VI of the petition a variety of acts described as "unfair and monopolistic" or "oppressive" are charged to have been committed by the defendants since the formation of the United Company by means of the predominance it has acquired. Of these, as set forth, "threats" of various kinds form a considerable proportion. It is charged that by "misrepresentations and threats" the defendants have induced competitors' customers to leave them, and have deterred others from attempting competition; also that they have threatened to use their financial or other power to secure to themselves the patronage of competitors. Under the above paragraph heading it is also charged that the defendants have bought up many patents for valuable inventions and held them long in disuse; that they have offered and granted rebates to such users of their machines as use them exclusively; and that they have bought out many
1480 competitors at exorbitant prices. There is a general charge of "many other unlawful acts too numerous to specify," and accordingly not specified in the petition.

A long bill of particulars, containing alleged specifications of these charges, was filed upon the defendants' motion during the trial (June 25, 1913). But there are very many of the charges so specified in support of which no proof whatever has been offered. Of those to support which some evidence was introduced, compara-

tively few have been insisted on in argument. The charge that competitors have been bought out at "exorbitant prices" is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them.

Nor has there been any evidence sufficient to show a practice followed by the defendants of buying up patented inventions to hold in disuse. This charge also is one not insisted upon in argument.

The charge that rebates have been given to exclusive users of the United Company's machines rests upon (1) the vote of the executive committee January 29, 1900, (2) a circular letter addressed on the company's behalf to its lessees ten years later, June 10, 1910. There is nothing sufficient to show that there was anything "unfair or monopolistic" about either the vote or the letter, or about anything done in pursuance of either.

The vote of 1900 was that royalties on the Gem insole machines be rebated to exclusive users of the company's machines. It appears that having acquired the Gem Company, which had machines in use under lease at the time at a royalty of one-half cent per pair, the United Company added the machine to its Goodyear auxiliary set, and to users of such sets paid back the one-half cent per pair in order to leave the rate upon the entire auxiliary set the same as before it included the Gem machine.

As to the circular letter of June, 1910, it announces the company's intention of investing fifteen per cent of the royalties paid by lessees of the Goodyear welting, stitching, and turn-sewing
1481 machines for three years in the company's common stock, and of distributing this stock proportionately at the end of the term among those lessees who should have faithfully observed the covenants of their leases during that period.

Neither of these acts on the company's part can be said to answer to the terms in which the charge of offering and granting rebates is made. That either act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not, or that either had that effect, can not be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein "rebate" has acquired an obnoxious signification.

It remains to consider how far the evidence proves the defendants to have used "threats and intimidations" of the various kinds described in the petition. As to far the greater part of the specified instances set forth in the bill of particulars, the charges of this kind

have been allowed to go wholly without attempt at proof. Of those regarding which any such attempt was made, six only have been insisted upon in the petitioner's briefs or argument. No reason whatever to believe that any greater significance could be claimed for any others of the specified instances than for these appears from the evidence regarding them to be found in the record.

Mr. Winslow, president of the United Company, Mr. Barbour and Mr. Hurd, vice presidents, all of them directors, are the only defendants charged in these instances with using any threats or intimidations. The other persons charged with making them are Mr. Bayley and Mr. Willson (since deceased), managers for the company at various times, but never made parties to this suit.

The only "threats" which Barbour is charged with making are testified to by James N. Darrah, vice president in 1900 of the Standard Shoe Machinery Company. According to Darrah, Barbour, at a talk in New York in April of 1900, tried to get him to sell out stock in his company by telling him, in substance, that if competitors of the United Company could not be bought out they would be
1482 forced out. Barbour has denied that any such conversation took place. Darrah's evidence was not corroborated; and there is no proof that his concern, though it went out of business in 1901, was ever forced out or crushed by the defendants.

Mr. Winslow is charged, in testimony by Charles H. Morse, with having said to him at some time in 1901 or 1902: "You don't suppose we are going to allow you to put them on the market"—referring to certain pegging machines then being made by the Fifield Company, with which Morse was connected. Morse, on his own testimony, was then negotiating with Winslow about a sale of the Fifield Company business to the United Company, but they failed to agree as to price. Its business was sold in 1906, but not to the United Company. There is nothing to prove that the United Company ever interfered with the marketing of this machine.

Mr. Winslow is also charged, in testimony given by Charles S. Johnson, with having said to him during negotiations in 1902 or 1903, regarding a sale of the Tripp Giant leveler, in which he was interested, to the United Company: "You had better sign that contract, because we are going to have your business anyway." But the negotiations did not result in a sale, and the Tripp Company's business, though sold out in 1905, was not acquired by the United Company. Not long after, according to Johnson's testimony, the United Company put on the market machines considered by him to be substantially the same as the Tripp Giant leveler, but there is no other indication of any interference with the Tripp Company or its business by the defendants.

Mr. Winslow is also charged, in testimony given by Merrick and Luitweiler, president and treasurer of the Union Lock Stitch Company, then developing machines not yet put on the market, with having told them in 1905, while attempting to persuade them to sell out to the defendants, that they would not be allowed to make any money; that the United Company would build their machines; that their business would come round to it and be taken by it, and that it was cheaper to kill competitors than to acquire them. The alleged statements are denied by Winslow. The business referred to
1483 is one never acquired by the defendants, nor is any interference whatever with this business shown. This was admitted, and the testimony of the two witnesses named is that they have put out 350 to 400 of the machines in question.

Bayley, a department manager for the United Company, is charged, in testimony given by Irving A. Hadley, then representing Kimball & Hadley, manufacturers of awls and needles, with having said to him in January, 1904, in answer to a claim by him that Kimball & Hadley could sell needles as cheap as the United Company, that the United Company could give them away if necessary.

It does not seem possible to attach any serious importance, for any purpose, to the remark, if made, even if anything said at the interview can be supposed to have had reference to a possible purchase by the defendants of the Kimball & Hadley business. Bayley was in a sanitarium, unable to testify, at the trial. Further testimony from Hadley, however, that certain factories had refused needles offered them by him for fear of controversy with the United Company was contradicted by the managers he mentioned. The business of Kimball & Hadley was one of those acquired by the United Company, but it was not acquired until the following June. It consisted in making Goodyear needles, which at the time of the acquisition the United Company was not making at all. An attempt by Kimball & Hadley, in litigation with the United Company some time afterward, to prove that threats and intimidation had been used in acquiring their business wholly failed. (See United Co. v. Kimball, 193 Mass., 351.)

Mr. Hurd is charged, in the testimony of Harry E. Cilley, with having said to him in 1901, during a conference with respect to a possible sale of his business to the United Company: "You can't do any business except on our sufferance, and you can't get a new dollar for an old one." It appears that Cilley's business at the time consisted in building a sole-leveling machine; that he was not satisfied with an amount suggested by Mr. Hurd as a proper price for it, told Mr. Hurd he considered it "outrageous," and never renewed
1484 the negotiations. Neither the business of this witness nor the

remarks testified to, if made, can fairly be regarded as of any serious importance, in view of all the circumstances shown.

It thus seems clear that nothing proved as to the above instances of so-called "threats and intimidations" is sufficient to justify such allegations as are made in paragraph VI of the petition about them. Even if anything said by a representative of the United Company on these occasions can properly be called a "threat," in view of all the surrounding circumstances shown, there is certainly no adequate reason established for believing that any competitor's customers have been induced to abandon them, or that anybody has been prevented from attempting competition by what was said. The instances relied on are widely separate in time and distinct as to circumstances and persons. They can not reasonably be regarded as showing a concerted purpose to suppress competition through intimidation, such as paragraph VI purports to charge. In every instance the expressions said to have been used by a representative of the United Company were in interviews with persons interested in some concern or machine which the United Company was asked or might be asked to buy. As has appeared, propositions of this kind were constantly being made to its representatives, and many more of them were refused than were accepted.

Not in paragraph VI, but in the preceding paragraph V of the petition, the charge is made that certain provisions of the leases, under which the United Company's machines have been operated by users, have been arbitrarily enforced, in pursuance of a general policy and practice to refuse machines for failure to comply with the terms and spirit of the leases "and to otherwise injure" users so failing to comply.

In the above bill of particulars filed, as has been said, on June 25, 1913, "in amplification of Section VI of the petition," the defendants are charged, in a number of specified instances, with threatening to remove or removing machines from the factories of users because competing machines or machines obtained from other concerns were also being there used or because such use of other machines was in contemplation. No proof whatever has been offered as to a considerable proportion of the instances thus specified.

1485 In the instances specified regarding which there is some proof nothing more is shown than that the United Company insisted, to a greater or less extent, upon observance by the lessee of provisions in his lease to which he had expressly agreed when he took the machine, and which he was purposely violating or proposing to violate to the detriment of the lessor, because such violation would tend to decrease the number of pairs of shoes operated on by the machine and thus the royalty to be paid for its use by the lessee.

If the provisions referred to in the leases are contrary to law, it was unlawful to insist upon them. The question here involved is later considered. But unless the provisions were unlawful, the evidence regarding these specified instances in which their observance was insisted upon wholly fails to show that in any instance the defendants did or attempted anything whereof either the lessee of the machine or anyone else had any right to complain.

It may be said generally that the instances in which machines were in fact removed from the factories of lessees under the provisions referred to have been so few in proportion to the total number of leases as to leave the general charge that such provisions have been arbitrarily or oppressively enforced destitute of any sufficient foundation. Only five such cases appear in the evidence. In each the lessee's conduct was in wilful disregard of the lease agreements and afforded a complete justification for the lessor's action, unless none is possible.

The bill of particulars filed June 25, 1913, brought into the case for the first time allegations that the defendants have endeavored to organize strikes in factories of shoe manufacturers wherein shoe machinery competing with their own was operated.

The only specifications under this charge are, in substance, that in June, 1910, Willson, then general manager of the United Company, assured certain employees of the Thomas G. Plant Company that if they would organize a strike in that factory the United Company would pay all expenses and reward the leaders "handsomely"; that in reliance upon said assurance about 300 of the operatives were brought into such an organization and a large sum
1486 of money expended by the organizers; that Plant thereupon had the organizers watched, and no strike resulted.

The only evidence to show that Willson ever gave any such directions or assurances came from three witnesses, employees at the Plant factory in June and July, 1910, who gave their testimony in person before the court. No one else was present, according to their statements, at the various interviews they described between Willson and themselves during the two months just referred to. Willson having died in 1911, and before these charges were made, no direct contradiction was possible of their statements as to what was said by him to them.

He told them, according to their testimony, that if they would organize a strike at the factory and give him all the information they could about the Plant machines he would pay their expenses, get them jobs, and pay them also $2,000 in cash (according to two of them)—$1,000 (according to the other).

Willson never did pay them any money, as they all agreed. But their testimony was that they got about 300 men into an organization

and spent about $1,500 of their own money in doing so, mainly in entertaining the men who joined. According to their further statements, $600 was contributed by one of them, $500 by another, and $400 by a third; their wages at the time were $15 per week; these sums were the savings of eleven or twelve years; accounts, lists, and vouchers containing details of their doings and expenditures were kept, but all of these were either surrendered to Willson or destroyed by them. No written evidence of any kind was offered in support of their story.

It appeared that there was some prospect of trouble between Plant and the employees at the factory at the beginning of June, 1910, but after meeting a committee with regard to an increase of pay asked for, Plant granted it, and no strike or other trouble ever occurred. There was no proof whatever that he ever employed detectives to watch the three witnesses in question, or that any attempt by them at organizing a strike ever came to his knowledge.

The testimony of these three men was not corroborated by any others of the then employees at the factory. On the contrary,
1487 several of them, shown to have had ample opportunity for knowing the facts had there been any such organization attempted as testified to, denied any knowledge of such organization or of any such preparation for a strike.

Winslow, president of the United Company, testified that Willson had told him, in June, 1910, that three Armenians had been to him asking that he furnish them with money to start a strike in the Plant factory, and that his instructions to Willson thereupon were to have nothing to do with them. No money of the United Company was ever paid out for any such purpose.

Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it.

The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that

the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects.

7. It remains to consider the charges made in the petition as to certain provisions in the leases and license agreements, under which the United Company permits the use of its patented machines, that they are either unlawful in themselves or have been devised,
1488 adopted, and used by the defendants for the purpose of destroying competition. (Paragraph V.) Upon these charges the petitioner may be said to have finally put its main reliance.

With regard to the provisions in question, as with regard to many of the matters heretofore considered, the position finally taken by the petitioner has differed widely from that originally taken in the petition as filed.

None of the constituent companies were in 1899 selling outright the patented machines they manufactured. The bill alleges the contrary, and charges that one of the steps taken after 1899, in pursuance of the alleged scheme to restrain or monopolize, was to discontinue sales and compel leases. An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist.

It appeared, on the contrary, that the method of marketing their patented machines followed by the constituent companies in and before 1899 was exclusively that of leasing, for a royalty upon each pair of shoes whereon the lessee should use the machine. Some of the leases also required an initial payment; others did not. The evidence also shows that the general system of leasing in this manner was, and had long been, the usual and accepted method of dealing between the makers of patented shoe machinery and those desiring to use their machines, and that, in its main features, it had thus become so widely and firmly established as to render the substitution of a different system practically impossible.

The defendants continued the policy which they found in use by the constitutent companies as to the kinds of machines to which this case now relates. Its machines of these kinds have never been sold outright; all users have taken them from the United Company upon leases granting the right to use the patented improvements embodied in them during the term of the lease.

It should be stated here, however, that as its business has progressed the United Company has developed a very large number of machines of other kinds useful in shoe manufacturing, as to which the policy of leasing only has not been followed. Such machines, included in what is known as the company's "General

1489 Department," have been and are sold outright to anybody willing to buy them, without restriction of any kind—a course of business more liberal than that pursued by either component company. The number of different machines wherein the United Company deals in the manner stated has come to be very considerable.

There was finally no contention that any law has been violated merely by the company's continuance of the policy of leasing only instead of selling.

That there was any violation of law in continuing, as the United Company did for a time after 1899, to maintain the leasing system and use the forms of leases which they found in use by the constituent companies, the petitioner is not in a position to contend.

There were suggestions in argument on its behalf that the system referred to was unlawful in some of its features, but the petition contains no such allegations. The claims therein made relate wholly to the leases put into use by the United Company after 1899 and rest on the proposition that these contain provisions "not found in (the) former lease and license agreements," the new provisions complained of being immediately thereafter specifically described. The petition characterizes them as "arbitrary, oppressive, and unreasonable." (Paragraph V.)

The United Company, of course, became after its formation the sole lessor of all the patented machines formerly leased by the different component companies. During the twelve years which then followed before this petition was filed there were, as is not denied, changes from time to time in the lease forms used for leases under which the use of certain of its machines were permitted. Generally speaking, one form was used with all leases of the same machine. There were some machines which might be taken under either of two alternative forms.

According to other allegations in the petition, it was part of the defendants' unlawful project, at the time of their combination in 1899, to refuse to sell or lease any essential machine except on condition that the lessee buy or lease of them practically all other machinery necessary or useful to him as a manufacturer of shoes.

No proof was offered at any stage of the case that the defend-
1490 ants had in mind in 1899 the system of leases they later developed or any of the modifications therein involved of the system which they found established in 1899.

At the argument the admission was made on behalf of the United States that there was no proof that at the time they formed the United Company the defendants "had in mind the adoption of the system of leasing which they later developed." And the position then taken by the petitioner in argument was that the leasing system referred to has resulted in illegal restraint or monopoly and that

the intent which prompted its development is therefore "absolutely immaterial."

As to the allegation that the defendants contemplated a policy of refusal to lease except on condition that the lessee buy or lease of them "practically all other machinery of whatever kind necessary or useful" to him as a manufacturer of shoes, it requires no further notice, now that the charge of restraint or monopoly in "any and all kinds of shoe machinery" has been abandoned. The evidence abundantly shows that nothing of this kind was ever contemplated, attempted, or done, and that there was never any justification for the charge as made.

With regard to the modifications introduced by the defendants upon the leases in use by the constituent companies in 1899, the petition alleges, in substance, (1) that under the former system lessees from one company were not held to the exclusive use of machines manufactured by any of the others; (2) that since 1899 the defendants have required their lessees, by provisions not found in the leases previously used—

"to agree to use exclusively one or more of the classes of machines included in said group of machines owned and controlled by them, upon penalty of having all the machines included in said group so leased to them by defendants immediately reclaimed and taken away and the lease and license agreement cancelled";

(3) that lessees are now obliged to hire each machine for a period of not less than seventeen years; (4) that lessees are now compelled to obtain all duplicate or repairs, parts, extras, etc., from the
1491 defendants at exorbitant prices; (5) also to pay return charges at the expiration of the lease, sometimes amounting to the original cost of building; (6) that the defendants now reserve to themselves in each lease the right to terminate all existing leases between themselves and the lessee upon his failure to use exclusively and to full capacity any machine leased to him by defendants. (Paragraph V.)

The evidence failed to show that lessees from the United Company had ever been compelled to pay exorbitant charges for repair parts, etc., or to pay any unreasonable return charges on leased machines. (4) and (5) of the above alleged modifications may therefore be now disregarded. In the subsequent sections of the petition no further reference to them is found.

In the "conclusion" section of the petition the following only, among the provisions thus alleged to have been added to the leases by the defendants after 1899, are charged to have been unlawful: Agreements by the lessee (1) that he would use exclusively machines of the lessor to perform the same kind of work as that performed by the machines leased, (2) that he would use in work

other than that for which the leased machine was designed only machines of the lessor, (3) that if the lessee should violate either of said agreements, he would forfeit the use not only of the leased machine, but others, whether accomplishing the same or different work, (4) that he should use the machine leased for seventeen years.

The objections made by the petitioner, at the argument, to agreements contained in the United Company's leases were not confined to those specified in the petition as above, but included others nowhere therein referred to.

At the argument, certain clauses extracted from the leases shown to have been used by the United Company, were said to embody the agreements objected to as unlawful.

But what was referred to as the "full capacity" clause, lessees agreed to use the machine to its full capacity on all shoes, etc., made by them in the manufacture whereof such machinery was capable of use.

By what was referred to as the "additional machinery"
1492 clause, lessees agreed that for any more work than their then leased machines could do, of the kind which machines belonging to the same department could perform, they would lease enough others to perform it from the lessor.

To neither of these two clauses was any reference made in the petition itself, as appears from the above summary of provisions in the leases therein complained of. The other clauses referred to at the argument were the following:

By what was referred to as the "exclusive use" clause, lessees agreed that if they should cease to use exclusively machines leased from the United Company, for doing work of the same kind upon shoes, etc., made by them, the lessor might, at its option, terminate all their leases of its machinery for doing work of that kind.

By what was referred to as the "prohibitive" or "tying" clause, lessees agreed that the leased machine should not be used upon shoes, etc., whereon certain other specified operations had been performed by machines not leased from the United Company.

By what was referred to as the "right to terminate all leases" clause, lessees agreed that failure on their part to observe any condition either of the lease of the particular machine or of any other lease from the United Company then in force, should give the lessor the right to terminate all leases of its machinery then held by them.

The above three clauses, and the alleged agreements requiring lessees to use the leased machine for seventeen years, appear to be the only provisions among those commented on in argument to which objection was made in the petition itself.

As to the use of such agreements as are expressed in the "full capacity" clause or the "additional machinery" clause, whereof, as has been stated, no complaint is found in the petition, the evidence shows that they were not new introductions by the United Company, but were contained in certain of the leases used by the component companies before 1899.

By neither was any agreement made which the evidence has shown to have been abnormal or unusual, or to have exceeded
1493 what was reasonably necessary to protect the lessor's interests in the contemplated use of its machine.

The lessor might well accept for the use of its machine a smaller royalty per pair, based upon the understanding that the machine would turn out as many pairs as its capacity permitted, than it could afford to accept without any such assurance.

Similar considerations apply to the "Additional machinery" clause. Without it, the lessee would be at liberty to do his slowest and most difficult work on the leased machine and the easiest on others or by hand.

The petitioner indeed conceded that both the above clauses might be unobjectionable had they not been used together with the others; but it relied upon their use with the others as tending to show the existence of an unlawful scheme. That this is an afterthought only, is shown by the failure to set forth either clause, in that aspect, in the petition. Moreover, as to the "Additional machinery" clause, the defendant had discontinued its use altogether two years before the petition was filed, a fact inconsistent with any claim either that it assisted monopoly or was intended to do so.

The consideration of the remaining clauses raises, in the first place, the question as to the truth of the allegations in the petition that such provisions were not found in the leases used before the consolidation of 1899, but were modifications thereafter introduced by the defendants, in pursuance of their alleged intent to monopolize the business.

The following facts appear regarding the leases in use by the component companies before 1899:

In the case of the more important machines an initial payment, of greater or less amount, was required of the lessee in addition to the royalty per pair stipulated in the lease. Such initial payments were required by all the leases from the Goodyear Company. The Consolidated & McKay Lasting Company required such an initial payment in leases of two out of the five patented lasting machines wherein it dealt; in its leases of two others no initial payment was required; and its remaining machine was leased either with or without initial payment at the lessee's option, the royalty being
1494 higher in the latter case than in the former. The McKay Com-

pany was the only one of the component companies whose leases did not require initial payments, whether those of the patented heeling or metallic fastening machines, which it made—or those of the Davey pegging machines, which it controlled.

It may be further stated with regard to the leases made by the constituent companies that two or more machines of the same company, intended for use in substantially the same operation, were generally leased as a group. Thus, Goodyear Company leases required its welter and out-sole stitcher to be used together, and permitted the auxiliary machines intended for use therewith to be used only on shoes welted and stitched thereon. As to its Ideal laster, the use thereof on welt shoes was restricted to use with its welter and stitcher. The leases of this company did not provide that the lessee should use its machines exclusively, and that unless so used the lease should terminate; but there were such provisions in the leases of the other companies. The Lasting Company's leases required use to the full capacity and the taking of additional machines for any additional work.

All the above leases were for terms for the most part either indefinite, or until cancellation by the lessor, or for the life of the patents embodied in the machines, or for seventeen years and thereafter during the life of any patent embodied.

In the forms of leases or license agreements which they found in use as above, the defendants made no change whatever until about a year had elapsed since the formation of the United Company. This the evidence shows without contradiction, and it further shows that when there were substitutions of new forms of leases in place of any of those in use as above, there was no change made all at once or in pursuance of any general plan, still less of any arbitrary plan; but, on the contrary, the change in each case was because special circumstances affecting the particular group of machines had come to render such change desirable.

The history of the successive changes adopted and of the reasons for each, was fully brought out in the evidence. Beginning with the first new lease form, adopted in March, 1900, the adoption of
1495 others followed at various times during the subsequent years. Some of the provisions most objected to by the petitioner were not adopted until 1904 or 1905.

Regarding the various modifications so introduced, it may be said in general that they tended to relax previous restrictions upon the use of leased machines, and to reduce the cost to the lessee of installing them. The most important changes made were, in substance, as below.

For agreements whereby the lessee expressly promised exclusive use of the lessor's machines belonging to the same group with that

leased, there were substituted options to cancel, reserved to the lessor, in case the lessee should discontinue such exclusive use.

The requirements found in leases used by some of the component companies that the leased machine should be used to its full capacity were extended to apply, in general, to all such machines, of the classes involved in this case, as were used in factories to measure the amount of work done, and thereby fix the amount of royalties to be paid upon the machines used in doing it.

As to certain groups of machines, provisions were introduced restricting the lessee's use of all machines belonging to the group to use only on shoes operated on by one or more of the other groups of United Company machinery. But in all such cases, without substantial exception, there was also offered an alternative lease form not containing such restrictions. An initial payment was required from all lessees preferring the latter form; no such initial payment was required from lessees under the form first mentioned.

A uniform term of seventeen years was adopted for all the leases.

Considering the clauses objected to in the light of what preceded them, and of the circumstances attending their adoption by the defendants, the petitioner has not, in my opinion, proved that the defendants' object in adopting them was the prevention of competition by others. Such prevention might, indeed, follow from the more favorable terms offered lessees, but modifications made in the existing system for the direct purpose of otherwise better
1496 adapting it to exclude competitors, would have been different in character from the modifications represented by these clauses.

Not only would it have been unreasonable, as has been said, to expect the defendants to substitute a wholly different system from the leasing system which they found in use, but the evidence affords no reason to believe that anything of the kind was desired by manufacturers in general. The advantages to them of not having to tie up capital in patented machines, and of paying for the privilege of their use only according to the amount of use, were advantages which they can not be supposed desirous of surrendering.

Modifications in the contracts offered them tending, as these are shown to have done, to enable the company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others.

If it were made to appear that the leases containing these clauses accomplished in and of themselves an unlawful restraint of trade, or necessarily secured to the defendants an unlawful monopoly, the intent to accomplish these results would, of course, be imputed to the defendants without regard to their actual purpose in adopting and using them. But the evidence seems to me insufficient for the conclusion that such results are so accomplished. The contention that they are fails, in my opinion, to take into account the defendants' rights in the field lawfully secured to them in the various patented improvements they had lawfully controlled and combined; and fails also to concede them proper scope for the rights properly incidental to their control of said improvements, to make such agreements with their lessees as would best promote the efficiency in
1497 combined operation of the machines leased, and thereby best enhance and safeguard their just return therefrom in the form of royalties.

The complaints made regarding leases embodying the clauses referred to are not directed against those pertaining to any particular kind or kinds of machines, as more objectionable than others. It is their entire combined effect which is attacked.

Concurring as I do in the views expressed regarding them by Judge Brown, I am obliged to regard the petitioners' allegations of their illegality as not sustained by the evidence.

In my opinion the bill should be dismissed.

1499 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA
v.
UNITED SHOE MACHINERY COMPANY, OF New Jersey, and Others. | In Equity, No. 301.

[March 18, 1915.]

BROWN, J.: The United States charges that certain provisions in the lease and license agreements of the United Shoe Machinery Company with shoe manufacturers restrain interstate commerce and tend to create or perpetuate a monopoly of interstate commerce in shoe machinery.

We may examine this topic, which comprehends a large number of very long and elaborate documents and a very large portion of the briefs and arguments on each side, most conveniently by considering the effects which the United States claims result from such provisions, rather than by attempting to set forth in full the provisions themselves.

Complaint is made of the effect of such provisions:

I. Upon the shoe manufacturers.

II. Upon other manufacturers of shoe machinery.

The rights of these two classes and the effect of the leases upon each present quite distinct questions. The only competitors or possible competitors are other manufacturers of shoe machinery. The shoe manufacturers as such are not competitors. As the com-
plaints of the United States on behalf of the shoe manufac-
1500 turers and on behalf of other machinery manufacturers relate
to distinct matters, they should not be taken cumulatively, and should not be confused.

The effect of the leases upon the shoe manufacturers.

This may be considered in three aspects:

As bearing upon the question of the legality of the original combination or organization of the United Shoe Machinery Company;

As an alleged illegal and oppressive outgrowth of power obtained by combination;

As restricting the shoe manufacturer's freedom of choice in taking the machines of other manufacturers; as preventing him from using the machines of others; and as compelling him to use the machinery of the defendants.

The petition of the United States charges that the defendants—"conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes, and thereby to exclude all competition by other manufacturers of such shoe machinery and to monopolize the trade and commerce therein among the States and with foreign countries."

It is also alleged that certain lease and license agreements constitute steps in carrying out such project.

It is urged in effect that such plan comprehends a denial to shoe manufacturers of such opportunities to obtain machinery as existed before the consolidation, and a compulsion upon them, if they desire a special kind of machinery, to take also other machines of different kinds from the defendants.

There seems to be in the case no other basis for such allegations than the leases themselves.

This bill was filed December 12, 1911, before the decision in
United States v. Winslow, 227 U. S., 202. In that case the
1501 argument of the United States as to the so-called "tying

clause lease" shows a conception of the character and effect of the leases similar to that set forth in the bill of complaint in the present case. It was supposed that the effect of such leases was to compel customers to take all of their machines from the defendants, or all from other sources, and that this was a direct restraint upon competition and trade by depriving them of the existing right to use some machines without also using others.

The argument as to the effect of the leases both in United States v. Winslow and in the present case seems to be based rather upon an ingenious theory of bringing the defendants within the Sherman Act than upon any proper interpretation of the leases or accurate information as to the facts.

The union of noncompeting businesses in a single company would appear to have no tendency in itself to suppress competition. The union in a single company of distinct companies dealing in distinct patented inventions for performing different operations would seem remote from the sphere of the Sherman Act. To charge defendants, who were engaged in the manufacture and sale of patented machinery, with an attempt to monopolize had little plausibility in the face of the fact that grants of monopoly had been made by the United States.

The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act.

The leases in evidence, as documents, fail to substantiate the charges either as to the contrivance of such a plan or as to its execution. It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of "independent" leases but by the testimony of officers of the company.

The charge seems to have been based upon certain so-called "tying clauses." There has been some confusion as to the scope
1502 of the term "tying clauses." The United States gives the following definition:

"'Tied to' means that machinery can not be used in the manufacture of boots and shoes with machinery other than that owned and controlled by defendants."

This seems to require consideration of clauses of two kinds—(a) the "exclusive-use" clause; (b) the "prohibitive" clause.

The "exclusive use" clause reserves to the lessor a right to cancel the lease in case the lessee shall fail or cease to use exclusively machinery of the kind leased. This kind of tying has no direct bearing

upon the question of the legality of the combination. What was before separate is separate after the consolidation.

The "prohibitive" clause provides that the leased machinery shall not be used in the manufacture of shoes that have been or are to be operated upon by machines of certain specific kinds not leased from the lessor. Though a similar clause was in use before the consolidation, it related only to machines of the kind made by one of the constituent companies. After the consolidation it related also to machines of other kinds formerly made by other of the constituent companies.

The prohibitive clause, therefore, is the one that has relation to the supposed scheme of using the power acquired by combination to refuse machines that before were separately obtainable, and to offer such machines only on condition that other machines of different kinds should also be taken.

"Tying," therefore, does not mean that the manufacturer is required to agree, or agrees, not to use the machines of others, but merely that he has secured only limited rights of use, and that if he exceeds such limited rights he may lose his lease. It is not a question of the legal effect of the lease, but of the practical consequences of securing only restricted rights of use. The term is misleading in its implication that the manufacturer is bound by contract not to use the machines of others. He is bound only not to use the leased machinery in violation of the terms of the lease.

1503 "Tying" is an inexact and equivocal term, which may refer merely to the machine or may mean either that the lessee is bound by contract or merely is under strong practical inducement.

The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.

It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.

The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases prove no such plan,

whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge.

It was, however, urged upon final argument, despite the decision in United States v. Winslow, 227 U. S., 202, that because the union of distinct lines in a single hand put it within the power of the company to devise and carry out such a scheme, the combination had such potentiality of evil that it should be disintegrated. This argument extends beyond reasonable limits the import of certain expressions of the Supreme Court in cases where there was such combination of competitors as to eliminate competition. This was within the statute, though none of the evils resulting from destruction of competition might yet have ensued.

In this case the mere consolidation of noncompetitive busi-
1504 nesses did not suppress competition, nor deprive customers of rights previously given by the constituent companies, and has no necessary or probable tendency to develop such a scheme as is unjustly attributed to the defendants. There must be added to the combination, from which naturally no such results would flow, an entirely new scheme.

The defendants having completely answered the charge that they devised or carried out such a scheme, the rejoinder that they might have devised and carried it out if they saw fit is entirely too far-fetched to bring the defendants either within the terms or within the spirit of the Sherman Act. Not only is there a failure of proof of the existence of such a scheme or of such a practice, but there is strong evidence to the contrary; not only in express denial but in the undisputed fact that the defendants' Goodyear welter and stitcher have never been put out on leases that prevented their use with machines of other kinds obtained from other manufacturers. These are the most important of the defendants' machines and the center of its system; they are the principal royalty paying machines and are furnished with a recording appliance to determine the number of shoes operated upon. The denial of their unrestricted use would have best served the alleged purpose of forcing the use of other kinds of machinery. The fact is that after the consolidation, as before, these machines, which the complainant's expert testifies are the only essential machines, and which are essential only if a shoe manufacturer chooses to make the special kind of shoes for which they are specially adapted, rather than shoes of other kinds, were put out only upon leases which did not contain the prohibitive clause.

The validity of the combination, therefore, is in no wise affected by the subsequent use of the prohibitive clauses.

We may next consider whether the shoe manufacturer who has chosen to take a lease permitting only a restricted or limited use of a particular machine is in any way injuriously or improperly affected by the fact that the businesses which before were in separate hands are now in a single hand.

1505 It can not be denied, and is practically conceded by the United States, that the "prohibitive clause," which is said to have the practical effect of tying together machines of different departments, is a limitation of the use of patented machines. The licensee has no right beyond the express provisions of his license, but is not bound by contract to take a machine for the performance of any other operation. If he desires to use for certain other operations the machinery of other manufacturers, he is met by the fact that the lease he has chosen, because it has been offered upon better terms than an unrestricted lease, gives him no right to continue the use of the leased machine. This, of course, may constitute a strong practical inducement to take other machines for other operations from the defendants rather than from other manufacturers. This inducement will be as strong as his desire to retain his lease. This, then, becomes not a legal but a business proposition.

The shoe manufacturer may untie the leased machine by taking another form of lease which contains no restriction, but requires an initial payment—though the royalties are the same. The amount of the "initial payment," which is a defined sum of money, seems, therefore, to constitute both the inducement to choose the restricted lease and the deterrent from changing a lease once taken for an independent lease.

This reduces the matter to one of dollars and cents. The defendants charge more for a machine used with machines of other manufacturers than for machines used as a part of a defined group of defendants' machines. Had they not combined the different companies they would have no occasion to do so.

The attack of the United States upon the "tying clause" makes no distinction between new machines which originated with the defendants and those in existence before the consolidation. There is, moreover, no attempt to show that the cost of independent machines has in any respect been increased since the consolidation, and the evidence from the defendants is to the contrary. Nor has the United States made any attempt to show by evidence that the prices charged for independent or unrestricted leases are excessive, or such as to prevent the manufacturer from using them profitably.

1506 The necessity of meeting the defendants' showing that there is no substantial obstacle in the way of a manufacturer who may desire to equip different departments with machines taken both from the United Shoe Machinery Company and from

other manufacturers is recognized by the United States, and the brief states:

"The amount of the initial charge for installing machinery under the so-called independent lease, and the cost for changing from one form of lease to another is so excessive as to restrain the manufacturers from choosing the independent system and to coerce them into taking the restricted forms."

Under this heading the United States relies merely upon the difference in price between the independent lease and the restricted lease. This is fallacious and does not meet the point. If the prices for independent leases are reasonable prices, if the shoe manufacturer can obtain what he could before, and upon reasonable terms, the fact that he and others are offered better prices for prohibitive leases is, of course, immaterial.

It is very earnestly contended that by this clause a shoe manufacturer is "bound hand and foot," and "is obligated" to take other machinery from the defendants. But when we consider that he has voluntarily chosen the limited right to use, and has merely declined to pay the price for the unlimited right to use—that he has got all he was willing to pay for—it seems fair to say that the only restraint upon him is the fact that he can not make use of another's property without his consent, and that this consent will cost him money.

It might well be said upon the authority of Henry v. Dick Co., 224 U. S., 1, 35, that the patentee's right embraces the lesser right of permitting others to use upon such terms as the patentee chooses to prescribe; and that the reasonableness of the terms offered for unrestricted use is not open to inquiry. But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges.

1507 The United States contends that the fact that independent leases are also offered is immaterial and that the validity of the prohibitive lease must be determined upon its terms alone. But this contention is clearly wrong. The tying of which complaint is made is merely the practical effect of the shoe manufacturer's choice of a restricted rather than an independent lease. When he wishes to provide himself with machines for other departments, his choice of the machines of other manufacturers may result in displacing machines leased from the defendants. If, however, he may still obtain the defendants' machines by the payment of an initial charge, then the only restraint upon his free choice is the sum of money required

to retain such of the defendants' machines as he has already installed. When a factory is equipped in the first instance with defendants' machines adequate in number for all departments, the choice between independent and restricted leases is a question merely of the comparative cost of installation. After a special equipment is outgrown, and there arises a demand for other individual machines to supplement it, then the manufacturer may desire a partial equipment with other machines of other manufacturers. Here arises from the prohibitive clause the substantial obstacle above referred to—that the installation and use of such machines may result in the removal of the whole equipment which he has taken from the defendants.

But the situation is one that can result only from a direct violation of one or more of his leases. While this may seem a harsh consequence of a breach of contract or of an infringement of the defendants' patent rights, it can not be said to touch the question of the validity of the prohibitive clauses. Even should we regard the agreed consequences of a breach of contract as serious, this does not relieve us from deciding the question whether the contract in itself is valid.

As it is not the purpose of the defendants to take their machines out of factories, but rather to put them in, we must consider those clauses which are designed to induce their installation, rather than those clauses that are designed to prevent a breach of contract,
1508 or which reserve a right to terminate the leases upon an infringement of patent rights.

We may assume that the prohibitive leases with the reduced prices are adopted by the defendants as an inducement to the manufacturer to take also several different kinds of machines, and that having once taken a restricted lease the manufacturer remains under a strong inducement to take machines of other departments from the defendants, and not from other shoe-machinery manufacturers.

The United States contends that the patent laws confer upon the owner of a group of machines, each protected by a distinct patent, no right to handle the entire group as a unit, thus making one patented machine aid another.

It is true that the right granted to the patentee to exclude others from the use of his patented invention is confined to the subject matter of that invention. It does not include the right to exclude the use of any other machine, patented or unpatented. When, however, a patentee has installed in a factory several distinct machines, each upon a restricted lease, he has as to each a full right of exclusion from other than the licensed use, and thus may legally exclude all machines that compose the group. But the proposition that patented machines can not be handled as a group is stated too broadly.

If what was before in separate hands is grouped in a single hand, and handled only as a unit, this might result in a refusal of what before was obtainable. But if the patented machines are handled both as individual machines and as a group, so that there is a free choice between the taking of individual machines and a group, we see no ground for objection.

One patented machine may be made to aid another in two ways—by using a refusal to deal with them separately as a means of compelling the taking of both, or by offering both at a lower price than the sum of the separate prices for each. The first is the way charged in the petition, but disproved as matter of fact; the second is the common device of wholesaling instead of retailing.

Were the defendants exercising merely the ordinary rights
1509 of owners of property, it could not be said that an entire contract concerning a group of such machines was illegal.

It is conceivable, if a single person should assemble in his hands a large number of distinct patented articles previously upon the market and refuse to sell any unless all were taken, that this in special circumstances might constitute such obstruction to a former freedom of trade as to fall within the Sherman Act. Where the patented machines were originated and first put upon the market by the defendants it is difficult to find any reason why they should not be grouped; but where there is no obstruction to a former freedom of trade, where there is no refusal of any article upon the former terms, it can not be illegal to offer a group for a price which is lower than the sum of the separate prices, or—what is the same thing—to offer each article at a lower price if other articles also are taken at a lower price.

We are unable to see that a shoe manufacturer has any just cause of complaint that the defendants offer him and their other customers restricted leases. One who refuses these leases and takes the independent leases may complain that other shoe manufacturers are getting their machinery on lower terms; but the royalty rate will be the same, and the cost of initial payments is fixed and may be weighed as against the estimated value of taking machinery from other manufacturers. It is a mere question of dollars and cents. It is legal for the defendants to discriminate in price between customers who take large amounts and those who take small amounts. In fact, it appears that certain large manufacturers have contended that it was unjust to them to fix the same royalty for a large manufacturer as for a small one, which has been the practice of the United Company.

We conclude, then, although the prohibitive leases, in so far as they tend to group together machines of different departments, may be regarded as a direct outgrowth of the consolidation; that the consolidation was not for this reason in any way detrimental

to the shoe manufacturer, but, on the contrary, was for his benefit, since it enabled the United Company to offer him better terms and enabled him to equip his factory cheaper than before. The
1510 argument of the United States upon the tying of department to department shows no reason for invoking the Sherman Act in behalf of the shoe manufacturer.

The effect upon other manufacturers of shoe machinery is a distinct topic to be considered later.

The leases are also complained of as restricting the shoe manufacturer's freedom of choice in taking the machines of other manufacturers; as preventing him from using the machines of others, and as compelling him to use the machinery of the defendants.

We may for the present disregard the fact that the United Shoe Machinery Company was organized by combining distinct companies.

The "exclusive-use" clause relates only to machines of a particular kind or department, thus differing essentially from the prohibitive clause. It was in use before the consolidation, and after the consolidation was not changed in this respect. Though it does not relate to grouping what before was separate, this clause imposes a limitation upon the right to use machines of a particular kind. The legal effect of it is merely a reservation of a right to cancel the lease in case the lessee should fail or cease to use the defendants' machines exclusively for work of a particular kind. It does not have the legal effect of a contract by the lessee not to use the machines of others. It is merely a limitation imposed by a patentee upon the right to use.

The reiteration by the United States of the statement that the lessee must use, or is required to use, defendants' machines exclusively is misleading. The distinction between a contract requiring a lessee not to take other machines and a limitation of the right to use the leased machines is very material.

The supplemental brief of the United States contends: "There can be no defense under the patent laws as to any provision complained of in the leases unless it be as to the use of the prohibitive clause." But no distinction can be made in this respect between the exclusive-use clause and the prohibitive clause. Both are limitations imposed by a patentee upon the use of his invention. The exclusive-use clause is effective only when the lessee is oper-
1511 ating machines of other manufacturers for doing work of a kind for which defendants' machines are available.

Here, again, the right of a patentee to so limit the license would seem to be directly sustained by the statement in Henry v. Dick Co., 224 U. S., 1, 35, already referred to.

The United States complains that it is the policy of the defendants to say to a lessee that for doing work of a particular kind he must use all or none of its machines.

If the general insistence upon the exclusive use clause is evidence of refusal by the defendants to lease their machinery for use with the same kind of machinery taken from other manufacturers, yet this refusal precedes any contractual relation between the defendants and the licensees. At this time the parties are unquestionably free to contract or not to contract, and by refusing the terms offered the shoe manufacturer loses nothing which he had before. "The public is always free to take or refuse the patented article on the terms imposed." Henry v. Dick Co., 224 U. S., 1.

The United States replies that the shoe manufacturers are not free to take or refuse; "they have entered into contracts which constitute an endless chain with respect to the use of the United Company's machines."

It is in evidence that during the existence of the United Company many new factories have been established and new installations made for persons who have voluntarily accepted these terms. Can the shoe manufacturers be permitted to complain, or the United States upon their behalf to complain, of what has thus been agreed to? These agreements have been entered into voluntarily by parties assenting on terms of equality. Can it now be urged that the acceptance of a limited right shall be declared a sufficient ground for making the right unlimited? Being free to choose in the first instance, and having chosen, can a lessee now urge that he is not free to use the defendant's property as he pleases as a reason for dispensing with the necessity of procuring that right from the owner of the machinery which he has installed?

It is merely rhetorical to say that these contracts constitute an endless chain. We have seen that as to the prohibitive clause
1512 there is a mere question of price. As to the exclusive clause there is a mere question of choosing between two different sets of equipment for one operation. The recent decision of the Supreme Court in Coppage v. Kansas, January 25, 1915, should put an end in this case to any argument upon behalf of the shoe manufacturers which alleges compulsion or coercion, or which asserts a freedom to use the property of another without procuring from him the right to do so.

"For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an agreement which, if fulfilled, prevents for the time any inconsistent course of conduct."

We must keep this in mind—that it is no part of the policy of the Sherman Act to relieve men of full age from the obligation of their

contracts, nor to interfere with contracts, except so far as they may restrain trade of contracting parties, or be aimed at the trade of third parties with a design to effect their exclusion from trade otherwise than by supplying a demand in fair and lawful competition. It could not be said that the trade of the shoe manufacturer was restrained by the denial to him in the first instance of the use of patented machinery, whether arbitrarily or by offering terms he could not accept. It would be equally unsound to say that his trade is restrained by a contract which provides for him at a very low price the most efficient machinery known at the time of the contract.

It is probably enough to say that, under the uniform rule recognized in many decisions, the defendants have the right, both as owners and as patentees, to refuse the use of the patented machines of any department as they may see fit, whether unreasonably or reasonably. However, as it seems to be contended that these rights have been impaired, to some extent, by the Sherman Act, we may consider whether or not the exclusive use clause is inserted for reasonable and proper purposes.

It can not be said that it is unreasonable or against public
1513 policy for the defendants to deal with shoe manufacturers only on the basis of a full equipment for a particular operation when the subject matter of the contract is not machines alone, but patented inventions as well. The inventions may reasonably be regarded as the principal subject matter of the contract rather than the number of machines necessary to a particular manufacturer. While the manufacturer may prefer to contract with reference to each machine as a unit, the defendants may prefer to regard the number of machines with which a manufacturer is to be furnished as incidental merely to a policy of licensing those only who will pay royalty according to the amount of work they have for machinery embodying the patented inventions. The amount of royalties to be paid by the manufacturer is, of course, a primary consideration.

While in the early stages of the case there were some criticisms of any leasing system as opposed to a system of selling, the very great advantages to shoe manufacturers in general of being provided with machine equipment of the highest efficiency, and of being relieved of individual effort in that most costly and difficult part of manufacturing, and the general satisfaction with the system were so overwhelmingly proved, that all doubt that the leasing system in general is unimpeachable has been removed. Furnishing capital to shoe manufacturers in the form of shoe machinery embodying costly inventions as well as great mechanical skill in manufacture, the defendants are fully entitled to claim a proper share of the advantages resulting from what they have produced. How to

obtain a just return for what they have contributed to the practical art has long been a problem with inventors. With many of them it has been a cause of complaint that a just share was denied them in what was attributable to their efforts. They have been accustomed, so far as they have been able, to reserve such rights as would secure to them a proper share in whatever business might be developed under the protection of patents covering their inventions.

In determining what is a reasonable share of profit when payment is to be made upon a royalty system, the value of the machinery as a means of production must, of course, be considered. A con-
1514 tract that a lessee should pay in advance a gross sum computed upon the capacity of the machine, or a rental computed upon the capacity of the machine alone, could not be criticised as unreasonable. A royalty system, however, in which payment is made only according to use is generally more acceptable.

If we are to consider such contract with regard to the rights of the lessor as well as to the rights and preferences of the lessee, it would be difficult to devise a more equitable arrangement than a requirement that the lessee should pay royalties according to the availability of the patented machinery for his use, rather than for such use of it as he may from time to time prefer to make. The lessor demands payment only so far as his machines are actually useful or available for the use of the lessee.

It is suggested in the brief of the United States that the lessor might accomplish all proper purposes by the fixing of a minimum amount of royalties; but such a suggestion does not solve the difficulty, for a minimum amount fixed in advance should include not only present use but such future use of the invention as might be developed. A royalty which has regard both to the capacity of the machines which the lessor furnishes and to the amount of work which the lessee may have to do upon machines embodying the patented inventions, seems beyond reasonable criticism. It is, of course, essential not only to fix a royalty rate but to provide a rate of use and a period of time for the use. A contract of this character must have permanency, and may be reasonably continued over a long period of years. A royalty may be likened to interest upon a principal.

A contract involving so largely the subject matter of inventions and of patent rights, and relating to the use of the tangible property of the defendants in the form of machinery and of intangible property in the form of patent rights, is substantially different from ordinary transactions of commerce, in that it relates so largely to the use merely of property, the title to which has not changed, and which continues for a long period in a fixed location, out of the path of interstate commerce. Browning v. Waycross, 233 U. S., 16.

Where the annual use is small it would seem necessary that the
1515 period be protracted, in order to secure a fair return upon the investment. Where machinery is furnished which is of a capacity beyond the work which the lessee has to do, the efficiency of the machine, its great productivity, which is due to constant improvements, is not fully availed of; and it may be said that there is value lost owing to the limited business of such lessee. Where the product of a manufacturer is very large, and where the capacity of many machines is availed of, the manufacturer may think that the important thing is the gross amount which he is called upon to pay, and that there should be some reduction in the rate of royalty or in the amount of use required. On the other hand, it might well seem to the Shoe Machinery Company that if its equipment had proved especially valuable to a particular business it should receive its full share on a pro rata basis.

There would seem to be little chance for a difference of opinion upon the question whether a shoe manufacturer who had been furnished with machinery of greater capacity than he was able to avail himself of should diminish his return of royalties by the employment of the machinery of others. The presence and use of other machinery would in such case be so directly inconsistent with the reasonable requirement that he should pay royalties to the extent of the use for which the leased machine was available, and use the machine to its full capacity so far as he had work for it, that the use of other than the leased machinery should be a sufficient cause for termination of the lease. It is said to be the case with a very large number—perhaps the majority in number—of shoe manufacturers that the machine equipment furnished them is more than sufficient for their work. The exclusive use clause, therefore, seems a necessary provision in these cases for securing what, from any point of view, must be regarded merely as reasonable compensation to the lessor.

With the large manufacturer the question is somewhat different. There will still exist the practical difficulty, if he introduces the machines of others, of determining what shoes are operated upon by such machinery and what by the defendants' machinery; but is
there reason for denying to the defendants the right to invoke
1516 the exclusive use clause merely as a means of securing to themselves their royalty upon the entire work of that kind done by the manufacturer?

Here, undoubtedly, is a chance for a decided difference of opinion between the large manufacturer and the Shoe Machinery Company as to what part of the business success should be attributed to the defendants' patented machinery and what to the business ability of the shoe manufacturer, and for decided difference of opinion as to whether the claim of the Shoe Machinery Company to a royalty

on all the work of a particular kind is reasonable. And here seems to be the only situation in which any question of the reasonable character of the exclusive use clause can arise. The terms, however, were fixed at the beginning, while both parties were free to contract or not. The machinery was installed with full notice that the lessee's right to its continued use was subject to the right of the Shoe Machinery Company to insist upon having royalties for all the work or to remove its machines if the lessee refused, as he has the right to do, to continue on that basis.

There is here no question of restraint of the trade of the shoe manufacturer, and no question whether a restraint of trade is reasonable or unreasonable. The lessee has contracted away no right which, but for the contract, he might freely exercise. The defendants stand ready to supply the manufacturer with machinery for the profitable carrying on of his trade. The shoe manufacturer has a full right to choose, and if the exclusive use clause is invoked is free from all obligation under his lease.

Furthermore, a contract providing that a manufacturer's business be carried on with machinery entirely adequate for the conduct of his trade, and which is the best machinery known for the purpose, does not injuriously affect him or the public. The reasons which underly the rule of public policy that forbids contracts in restraint of trade are absent.

A contract, requiring the use of certain machinery in a manufacturing business, between one who is to carry it on and one who is to furnish capital, or his own property tangible or intangible as a means for carrying it on, is a provision " for the prosecution of
1517 the business in a particular mode and not for its restraint." See Kinsman v. Parkhurst, 18 How., 289, 293; Chicago v. Pullman, 139 U. S., 79, 89.

This can not be treated as a petition for the reformation of contracts made between the defendants and the shoe manufacturers. An appeal to the public policy evidenced by the antitrust act can not be made to extend the rights of the shoe manufacturers, under their contracts. There being no restraint of his trade, the United States shows no ground for intervention on behalf of the shoe manufacturer.

The "additional machinery clause," though not included in the Government's definition of a tying clause, requires a brief consideration.

This is a contract by the lessee that if he has work for more machines than were first installed he will take from the defendants such additional machinery of the same kind as is necessary for doing all his work of a particular kind. This was an old form of contract

in use before the consolidation, and to some extent afterwards, though abandoned some time before the filing of the petition.

The grounds upon which the exclusive use clause is held reasonable support this clause also. The exclusive use clause, however, represents the present policy of the company.

The "full capacity clause," by which the lessee agrees to use defendants' leased machinery to its full capacity so far as he has work for which it is capable of use, has already been referred to. The direct purpose of this is to secure a substantial amount of royalties. It is inconsistent with the use of the machines of others, but of this no just complaint can be made. Having a license for the use of patented inventions, the lessee must pay the agreed consideration, and if the licensor insists he must pay it whether he in fact uses the machinery or not.

The agreement to use to full capacity is auxiliary to the purpose of fixing the gross amount of royalties. It relates to machines with a recording mechanism which shows the number of shoes operated upon. Upon a breach of the agreement to use to full
1518 capacity it is difficult to see that there could be any basis for damages other than the amount of royalties that would have been paid had the machines been so used. An alleged breach of a somewhat similar provision for determining a quantity upon which royalty was to be paid was held not to be an independent cause of action, the provision being merely a subordinate part of an agreement to pay royalties. Jobbins v. Kendall Mfg. Co., 196 Fed., 216; see also In re O'Gorman Co., 195 Fed., 650.

But the general impracticability of determining the amount due, except in the way contemplated, fully justifies the provision for a cancellation of the lease upon a discontinuance of the use of the machine and the production of the proper record.

The United States concedes that if the "full capacity clause" stood alone, thereby requiring the use of the leased machine alone as long as it could perform all work of that kind which the lessee had to do it would be subject to little criticism. The objection is to its use in conjunction with the "exclusive use" or "additional machinery" clause. This conjunction of clauses, it is said, inserted in a large number of leases, shows a policy to force or create in the defendants the power to force its lessees to use exclusively machines of that class. This it is asserted is unlawful.

But the mass of leases has, in this respect, no cumulative effect upon the shoe manufacturer, for each lease taken singly gives to the lessee notice that his right to use may be terminated if he fails or ceases to use exclusively. The question as to him is whether such a reservation of right made by the lessor of patented machinery is unlawful.

If there is any "force" exerted upon him, it is from his lease alone, and not from the mass of leases taken by others; and, as we have seen, is merely the result of a limited grant made by a patentee, who may refuse him any right of use. But here, as we have seen, is nothing that can justly be deemed coercion.

Complaint is also made in behalf of the shoe manufacturer that the term of the licenses is too long—seventeen years—and it is said that this period is regardless of the terms of the patents.

Allegations were made that these long terms were fixed for
1519 the purpose of tying up by contract what would soon be free from control through letters patent. It is true that the United States referred to certain licenses which ran beyond the terms of any patents mentioned in them. The evidence shows, however, that the leased machines were, as matter of fact, protected by letters patent throughout the period of the leases. Seventeen years, of course, is the term of a patent. Nothing is more common in agreements concerning patented inventions than to contemplate and provide for improvements. The shoe manufacturers who have assented to this period can not complain of it. They have secured very valuable rights at a very reasonable sum for a long period of years. The history of the company and the experience of the manufacturers, who have not been required to sink their capital in machinery which, as the evidence shows, will afford them no banking credit, shows no just cause for complaint as to the length of the contracts. The evidence shows that full value has been furnished by the defendants for the royalties which they have received.

In considering the reasonableness, as between the defendant company and the shoe manufacturer, of a long-term contract, we must look not alone to the fact that the shoe manufacturer may be bound for a long term. It is a case of reciprocal obligation, for the shoe manufacturer is bound for no longer period than that for which the defendants, upon a just construction of the lease contracts, are also bound. The requirement of use to full capacity, so far as the manufacturer has work, and the exclusive use or additional machinery clause impose upon the defendants the corresponding duty to furnish machines, and the shoe manufacturer is relieved from his obligation unless the defendants supply him with the means for fulfilling it.

It has been suggested that the terms of these contracts may be indefinitely prolonged by furnishing additional machines only for new periods of seventeen years. Apparently there is no force in this suggestion; for a failure of the defendants to furnish what was necessary for carrying out the requirements of the contract, or the refusal to do so except on terms inconsistent with the original contract, would release the lessee from his obligation.

1520 The insistence of the defendants upon the taking at the outset of an amount of machinery adequate for a lessee's entire work is, as we have said, unquestionably within their right. When additional machinery is sought, and the defendants insist upon the same general terms, their right to do so can not be abridged by the fact that there has been a previous installation of machines. The policy is not altered from that of which the lessee was apprised at the outset.

The cancellation clauses, however, provide a practical means of escape for those who consider the term too long. They may install other machinery and run the chance, and if the machinery so installed is satisfactory they may use it for their full equipment when the machines of the defendants are removed.

It is contended for the defendants, and there is evidence in support of such contention, that the actual practice of the Shoe Machinery Company is not fairly represented by reference to the literal terms of the leases, but that it is much more liberal, and that it is customary to make modifications in particular cases.

The general policy of the company has been clearly brought to the attention of its lessees and was exercised fairly and reasonably in those specific instances which the United States has brought to our attention.

It is stated upon the brief of the United States that the record shows that a number of the largest shoe manufacturers in the United States, lessees of defendants, are dissatisfied with their system of leasing. A number of these gentlemen have testified before us as to their very large production of shoes. They made no claim that the leases of which they complain have not furnished them with machinery entirely adequate for their business. Though the argument of the United States has urged upon us the unfortunate position of a shoe manufacturer after he has entered into contract with the Shoe Machinery Company, and deplores his supposed obligation to use the defendant's machinery throughout the contract period, yet these very intelligent gentlemen can not be regarded as objects of unjust
1521 oppression or coercion, unless that term be used in the very loose sense which was rejected by the Supreme Court in the case of Coppage v. Kansas, January 25, 1915.

The hardship to a manufacturer if, during this long period, there should come upon the market superior machinery has also been urged. During the period of the leases no such situation has apparently arisen. This argument was very sensibly dismissed in the United Shoe Machinery Company v. Brunet, 1909 A. C., 330, as based upon too remote a contingency. Such contingency was within the purview of the parties at the time they entered into the con-

tract, and the choice of the restricted instead of the independent form of lease would seem to indicate that the practical value of being able to meet it was not considered by the shoe manufacturers greater than the amount of the initial premiums for independent machines. A business contract, like a statute, is not to be upset "upon hypothetical and unreal possibilities, if it would be good upon the facts as they are." Pullman v. Knott, 235 U. S., 23.

As has been said, the Sherman Act was not designed to relieve parties from the obligation of contracts fairly entered into. It can not be invoked in this case to abridge the right of contract in order to establish what Justice Holmes terms "the equality of position between the parties, in which the liberty of contract begins." Coppage v. Kansas, 236 U. S., 1. Here the parties stand upon terms of entire equality. The large shoe manufacturers and the defendants seem to differ as to what are fair and reasonable terms, but the Sherman Act can not be invoked to settle a trade dispute of this character between such parties.

To justify interposition in behalf of the public it must appear that the interests are those of the public generally, as distinguished from those of a particular class. The legislature may not, in the guise of protecting the public interests, arbitrarily interfere with private business. Lawton v. Steele, 152 U. S., 133, 137. The rules of public policy which make a given contract void are not to be extended arbitrarily. Baltimore & Ohio v. Voigt, 176 U. S., 498, 505.

There remains to consider upon this branch of the case, and as directly bearing upon the reasonableness of these contracts, the
1522 important fact that a very large number of very intelligent and competent men, heads of manufacturing establishments, have independently accepted these terms. The large number of leases is strong evidence that upon the whole the terms are reasonable, and that the requirements from the lessee, of which complaint is made, have not been regarded as more than could be advantageously accepted. Such manufacturers have had free option to manufacture boots and shoes of other kinds. They may have from the defendants by purchase if they like the assistance of some 170 machines from their general department. They may have manufactured for them, if they see fit, those commercially practicable welters and stitchers upon which patents have expired, or they may manufacture largely by hand methods. It must be remembered that the defendants' machines are largely labor-saving devices. The situation is not that of a monopoly, and the case of the United States upon that aspect has completely broken down. These contracts which the United States attacks, moreover, give to the lessees, many of whom seem entirely satisfied with them, very valuable rights.

Nothing more impractical can be imagined than the prayer of the petition that these contracts should be cancelled. To restore the parties to the original situation would probably result merely in agreements which would meet the objections of the United States, and would yet be in substance the same. Payment of royalties according to use necessarily involve some provision as to the amount of use. The exclusive use clause can only be criticised as requiring too much use, and, therefore, too high a price. It is, after all, a question of price, and the right of the defendants to fix their prices covers so many different modes that if this particular mode of payment is found objectionable, other modes less convenient, but accomplishing the same result, could readily be adopted.

The United States also objects to the fact that certain auxiliary machines for use in conjunction with the Goodyear welter and stitcher are supplied only to those who take the Goodyear welter and stitcher. These auxiliary machines are supplied without royalty,

1523 and for the purpose of increasing the production of the welter and stitcher; but there is no proof that the combination affected these. The right of a person to promote the sale or use of one class of goods by giving also other goods or tokens for goods, though it has been attacked by legislation, has been upheld in decisions which hold such legislation by a State unconstitutional. Van Deman & Lewis v. Rast, 214 Fed., 827, 833; Little v. Tanner, 208 Fed., 605, 610; State v. Dalton, 22 R. I., 77.

The rule that a decree can not be made which injuriously affects the rights of third parties would seem to require that before the court in any event could proceed to a decree to annul these leases the lessees should be before the court as parties. Minnesota v. Northern Securities Co., 184 U. S., 234, 235; Shield v. Barrow, 17 How., 130; Gregory v. Stetson, 133 U. S., 579.

The effect of the leases upon other manufacturers of shoe machinery.

Here we have to consider the effect of the mass of defendants' leases upon persons who are not parties to them, and who, therefore, have not entered into any contracts in alleged restraint of their trade. The inquiry must be, therefore, whether by reason of the insertion in a large number of leases of those clauses of which the United States complains competition is suppressed to such extent as to tend to monopoly of interstate commerce in a field which otherwise would be open to competition.

It is most important to observe that the petition presented the leasing system as a part merely of a general plan of monopoly. The main brief of the United States so treated it.

The subject matter to which these leases relate is a part only of the machinery dealt in by defendants. The supposed field of monopoly

has now shrunk so that it is much narrower than the general field of shoe machinery, or of shoe machinery for the bottoming of shoes by stitches or otherwise, in which field it appears that there never has been a monopoly, but always active competition between defendants' machines and other machines.

The supposed monopoly, or suppression of commerce, relates to machines for performing a part only of the large number of
1524 operations necessary to complete a shoe. The leases relate to machines protected by patents; many of them were originated and first put upon the market by the defendants. Many of these machines have such individuality that there are no others which perform the same function or with which they could be classed.

With articles of common production the existence of competitors may be assumed, but here no such assumption is admissible.

If the question here is whether the leases have the effect of unlawfully excluding competitors from interstate commerce in shoe machinery, we must at the outset inquire in a general way as to the present or possible existence of competitors. In United States v. Winslow it was said:

"The machines are patented; making them is a monopoly in any case; the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents; Paper Bag Patent case, 210 U. S., 405, 429; and it may be assumed that the success of the several groups was due to their patents having been the best."

As the subject matter of the leases is patented machinery, the presumption is that there are no competitors who can offer the same machinery. Whether there are competitors able to supply other kinds of machinery, patented or unpatented, which can be used for work of the same general description as that for which defendants' patented machines are adapted and used is matter for conjecture.

The competitor who is excluded from supplying the defendants' lessees because the lessee is compelled to choose between his machines and the defendants' machines may be, and as to many of the machines is likely to be, an imaginary being.

It appears, however, that for some of the operations for which the leased machines are adapted there are upon the market machines made by other manufacturers, and that in a general sense there are competitors.

To determine how far the leases have had the actual effect of excluding competitors it would be necessary to consider in much detail the special subject matter of the leases, the dates of
1525 patents, and the special and peculiar operations performed by the machines.

The defendants insist that in order to meet a charge so much narrower than that of the petition it would be necessary for them

to offer evidence as to each unit, and to prepare a defense of an entirely different character from that required to meet the petition; and this seems probable. We may, however, refer to a few considerations of a general character.

In the first place we must make a clear distinction between that which undoubtedly the defendants have the right to do and that which it is said may improperly affect competitors.

As owners of patented machinery and as manufacturers of machinery, whether patented or unpatented, they have the right to supply to the best of their ability as many customers as can be induced to take their machinery. They have the right, for the reasons which we have stated, to enter into long term contracts with shoe manufacturers for the use of their patented machinery throughout the terms of the patents. Merely as manufacturers they have the right to enter into long term contracts for supplying their machine equipment to those who are willing to agree to long term contracts.

That, irrespective of the question of patents, a long-term contract, fifteen years, with exclusive rights, was not in general restraint of trade, and was not void as against public policy, was determined in Chicago etc. R. R. Co. v. Pullman Car Co., 139 U. S., 79, 89, et seq.

The United States relies greatly upon U. S. v. Reading Co., 226 U. S., 324, and seeks to establish an analogy between the so-called "sixty-five per cent contracts" in that case and the large number of contracts of the defendants with shoe manufacturers in this case. But the resemblance between the Reading case and the present case lies only in the fact that in each is a large number of contracts. In the Reading case an existing and definite supply of coal was monopolized, and a definite part of that supply was monopolized through the sixty-five per cent contracts. In this case, so far as the leases are concerned, there is no question of monopolizing an existing supply. The monopoly, if any, is a monopoly of
1526 customers for machines for performing the particular operations to which the leases relate. The complaint is that defendants' customers are so bound by the leases that they are no longer customers for other manufacturers of shoe machinery.

The monopolizing of a definite and limited supply of a commodity and the monopolizing of customers for machines for performing certain operations in the manufacture of shoes are as far apart as possible. The number of customers, or possible customers, for shoe machinery has been very largely increased during the life of the defendant company. Many of these customers were first induced to be customers for shoe machinery by the fact that machine equipments were offered them adequate for the establishment of a manufactory of shoes. The customers are not a fixed quantity.

They comprise such persons out of the entire population of the United States as may be induced to engage in a manufacturing business by knowledge that they can procure adequate machinery for that purpose on suitable terms.

We must take into consideration not only natural persons but also those artificial persons easily created under general laws of incorporation for the conduct of any enterprise requiring a considerable amount of capital. A large number of shoe manufacturers concerning whom there is evidence in this case are corporations, and the leases relate to the activities of corporations. The individuals who are stockholders or officers of such corporations may in new corporate forms engage in shoe manufacture.

Upon the face of it any undertaking to monopolize such an undefined field as that of customers for shoe machinery seems impracticable.

Counsel for the United States inquire what possible hope there is for other manufacturers to deal with the customers of the Shoe Machinery Company so long as their leasing contracts prevail. This inquiry would be substantially the same if all those provisions in the leases to which objection is made were stricken out.

Assume the existence of a large body of leases for only the period of patents and requiring merely payment for a right to use, but with the additional machinery clause, the exclusive use clause,
1527 and the prohibitive clause omitted; the inquiry would still be the same. It may be said, however, that with these clauses in it is somewhat more difficult to deal with a customer who has secured from defendants either a complete or partial equipment.

The exclusion from trade which results from the fact that many customers are supplied cannot be complained of by the United States. The complaint must be limited to such exclusion as results from the clauses objected to.

Perhaps the simplest way of treating the leases in this connection is to consider whether if the defendants had agreed in express terms to furnish for seventeen years entire equipments for shoe factories, and the shoe manufacturers had agreed to operate these equipments exclusively for that period, this could be condemned.

The true effect of the leases is much less than this, but if such agreements can be condemned it must be upon the theory that both the defendants and the shoe manufacturers have lost the freedom of contract which existed before the Sherman Act, and that contracts advantageous to both, and agreed upon by both, are invalid because they take customers out of the market.

The Sherman Act seeks to maintain competition as a means to the end that trades may be made and closed, and not to forbid con-

tracts in order that competition for particular customers may be perpetually maintained.

A public auction affords perhaps the fairest means for competition, but when the hammer falls the purpose for which the public auctioneer was employed is accomplished; competition has achieved its end—a binding contract.

If between the parties the contract is fair and has relation to the consideration which each is to render, if nothing which has no relation to this is inserted, the contract must be upheld even though it may destroy a third person's chances for competition. We must find in the leases, or in the conduct of the defendants in offering them, or in enforcing them, something which "transcended what was necessary to protect the use of the patent or the monopoly which the law conferred upon it." Standard Sanitary Mfg. Co., 226 U. S., 20, 48.

1528 If, for the sake of the competing manufacturer of shoe machinery, it was sought to obviate the objection that the leases are too long, a reservation to the shoe manufacturer of a choice to terminate his lease at any time would seem to be all that could reasonably be asked. If allowed an opportunity to choose at any time between the machines he has taken and the machines of others, this should answer the objection to the length of the leases.

But the shoe manufacturer has such a choice.

The exclusive use and cancellation clauses serve to facilitate this choice and not to prevent it. If the defendants exercise their rights under these clauses he is freed completely, and thus becomes a possible customer for a competitor. If the defendants do not exercise their rights, he continues bound by his agreement for the payment of royalties; but subject to this he may, as we have seen, without actionable breach of contract, install at once the machinery of others.

The contention of the United States that it is unlawful to make the shoe manufacturer, by the exclusive use clause, choose between the defendants' machines and other machines, we have seen cannot be sustained on behalf of the shoe manufacturer. Nor can it be sustained on behalf of the manufacturer of shoe machinery, for it opens to him a chance for competition. All cancellation clauses if exercised are in one way favorable to him. They are unfavorable only so far as the shoe manufacturer may desire to retain the machinery of the defendants.

In reality what stands in the way of a competitor is the desire of the shoe manufacturer to retain his rights under the leases. If compelled to choose he will choose the defendants' machinery, and thus the defendants, upon such choice, will win in competition.

It is quite true that when a shoe manufacturer has installed several machines under the prohibitive leases the extra cost of changing

all his prohibitive leases for independent leases may be so considerable that competition is difficult. He has taken the machines as a group, and one who has not a group to offer in substitution has little practical chance to compete. But a competitor must be able to compete. If leases for machines for use as a group are
1529 offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles are too common to be condemned for such reason.

The United States treats the question of the leases rather as an abstract or verbal question than as a practical question or a question of substance. The grouping of machines, each protected by one or more distinct patents, is treated as a mere artifice for making one machine aid another in a trade for machinery.

The assumption that it is highly desirable that the shoe manufacturer should be at liberty to group the defendants' machines with such other machines, taken from other manufacturers, as he may see fit, ignores the fact that though machines may be treated in the Patent Office as separate, in a shoe factory the machines have a very definite mechanical relation to each other and to the particular method of making a shoe. The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. The United States fails to show that the grouping of the machines is in fact made merely as an unlawful artifice and not because of sound mechanical and business reasons. It has referred to certain leases in which there appears to be no necessary mechanical relation between some of the machines grouped. Thus to a limited extent it may be true that the grouping is for the purpose of trade or of contract rather than because of the close relation of the machines in process of manufacture; but this is insufficient to show that the principal purpose was not, as is contended by the defendants, to secure by efficient cooperation of machines a larger production of shoes.

A contract for a group of related machinery, or for a sup-
1530 ply of machines not immediately related but used only in separate mechanical steps of a manufacturing business, is an entirely proper and normal contract. The matter cannot be better

stated than by Judge Putnam in United States v. Winslow, 195 Fed., 578, 592:

"It seems to be impossible to deny that the combination of various elements of machinery, all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically and of furnishing any customer, the whole or any part of an entire system, is in strict and normal compliance with modern trade progress, as also it might be in strict compliance with modern progress to limit the manufacture and supply to certain details, as, for example, steam gauges, wheels for railroads cars, or axles for steam locomotives, without furnishing anything else, although by so doing the manufacturer of details becomes able to command the entire market. It is absolutely normal and in accordance with the rightful demand of the market for any dealer to supply mere details or an entire system of machinery, according as his customers may desire."

It may be admitted that the inducements offered by the United Company in the complete or partial installation of a machine equipment on terms which relieve the manufacturer from the expense of an initial payment and from the loss by deterioration make it a very formidable competitor. It may be assumed that the difficulty of introducing competing machines into factories so supplied is very great; but that this difficulty arises from the insertion of clauses in the leases which were directed at competitors, and were not inserted for the purpose of defining and securing a reasonable compensation to the defendants for the use of their patents and machinery, has not been made to appear.

The main purpose, to insure such permanency of the relation between lessor and lessees as has been agreed upon, being legitimate, and the judgment of a large number of practical men who have separately, and without concurrent action, accepted what was offered them by the United Company upon the terms offered being the best proof of the reasonableness of these terms, we must hold that

1531 the difficulty of a competitor arises from the fact that customers are already supplied rather than from any provisions designed to hold these customers to what they have agreed to, or which provide for the termination of the leases and the freeing of the manufacturer from his contracts with the United Company.

The free field in competition to which a new manufacturer of shoe machinery is at this date entitled is not a field where there is no prior art, nor where the shoe manufacturers are unsupplied with machinery, nor where there is an unsatisfied demand for machinery in every factory. One who goes into a field of manufacture already occupied must expect to find factories so fully equipped that they are no longer customers.

Counsel for the United States do not, however, sufficiently recognize the difference between the commercial situation relating to patented articles and that relating to articles of general production. The inventor seeks to displace by invention inferior methods, and such displacement is encouraged by giving to the patentee a free field for his invention, and by giving him the right to offer it upon such terms as he may induce the public to accept. During the period of monopoly he may establish a good will which will give him after the expiration of his patents a formidable advantage in competition over imitative manufacturers. Frequently this good will and the development of his business may be such as to practically and lawfully exclude competition after the expiration of his patents. When a thing is so successfully accomplished and perfected as to satisfy all requirements, further invention in that field is often discouraged. The manufacture of complicated machines, in order to be profitable, must be on a large scale and by an organization having mechanical skill.

The defendants saw before them a large field for the business of supplying labor-saving machines to shoe manufacturers. They saw, as was expressed in a circular of the Goodyear Shoe Machinery Company, dated February 8, 1889, "The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery." This circular, instead of affording evidence of an improper purpose, shows a plan whose development has been of
1532 great advantage to the industry of shoemaking, and which has been determined to be lawful by the Supreme Court in United States v. Winslow, 227 U. S., 202, 217.

It was but natural that a company dealing with shoe manufacturers, in respect to a device for labor saving upon one operation of shoe manufacture, should extend its business so as to be able to supply labor-saving devices for other distinct operations. As the operations in making a shoe are said to be 150, more or less, it was a natural development, after effecting a saving in one operation, to invent mechanical means for saving in other operations. Instead of closing the door to invention, invention in the art of shoe machinery was thus greatly developed and greatly encouraged.

A company of sufficient capital to furnish a large line of labor-saving devices for different operations in shoemaking, which devices must necessarily be more or less related to each other, would properly strive to furnish not only single machines but groups of machines, or an entire machine equipment. The enterprise of the defendants in developing and occupying a field in this way rendered it impossible, of course, for any subsequent organization to have the

advantages of an unoccupied field. It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of patents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear.

The clauses objected to are all subordinate and auxiliary to maintaining rights which unquestionably belong to the defendants; to charge their own prices and to choose as customers those who will pay those prices.

The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them.

Other modes, such as the requirement of arbitrary pay-
1533 ment for the full period of the patents, would escape all such attacks. The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions.

The defendants very forcibly contend that no decree for the United States can be based upon the leases alone as an independent ground for relief, for the reason that the leases were presented merely as parts of a general plan of monopoly. They, in turn, rely upon United States v. Reading Co., 226 U. S., 324; but to show that the petition can not be sustained under the first section of the anti-trust act, and insist also that the question whether the leases are contracts in restraint of trade can not be determined because the lessees have not been joined as parties, and are not before the court.

They further insist that the subject-matter of the leases is substantially different from the subject-matter of the petition, and requires that the defendants be given an opportunity to introduce specific evidence as to the different patents and different machines.

The defendants during the trial have waived no rights in respect to these contentions.

In view of the fact that my conclusions upon the merits of the lease question are favorable to the defendants, I pass these objections without a decision upon their validity.

In view of the full discussion of the other portions of the case by my associates, I need only state my general concurrence in their conclusions, and that I concur in all respects in the opinion of Judge Dodge upon the lease question, as well as upon all other questions in the case.

1534 *Decree, May 14, 1915.*

PUTNAM and DODGE, Circuit Judges, and BROWN, District Judge:

This cause came on to be heard at the March term of this court, to wit: On the 20th of May, 1913, and hearings were held from time to time thereafter; the evidence of all the witnesses (except certain testimony as to patents which was taken by an examiner, as further appears in the record of this cause) being heard orally in open court by three judges, a certificate of the Attorney General for speedy hearing by three judges having been filed on May 20, 1912, under act of Congress of February 11, 1903, 32 Stat., 823, and the court having carefully considered the pleadings of the parties and their evidence, and heard the counsel. Now, on motion of Charles F. Choate, jr., Esq., of counsel for the defendants, it is ordered, adjudged, and decreed that the bill of the United States of America be, and the same hereby is, dismissed.

All stipulations of record in the cause in respect to disbursements are hereby confirmed and decreed.

By the court:

WILLIAM NELSON, *Clerk.*

1535 *Petition of United States for appeal and assignment of errors.*

[Filed May 15, 1915.]

Petition for appeal.

The United States of America feeling itself aggrieved by the final decree entered in the above-entitled cause comes by counsel into open court and prays an appeal from the said decree to the Supreme Court of the United States.

The particulars in which the United States considers said decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

The United States further prays that a transcript of the record, proceedings, papers, and evidence upon which said decree was based, duly authenticated, may be transmitted to the Supreme Court of the United States; and that the United States may have until October 1, 1915, within which to file such transcript of record with the clerk of the Supreme Court and to docket its said appeal.

GEORGE W. ANDERSON,
United States Attorney.
H. LARUE BROWN,
Special Assistant to the Attorney General.

Dated this 15th day of May, 1915.

Allowed May 15, 1915.

FREDERIC DODGE,
U. S. Circ. J.

1536 Assignment of errors.

Comes now the United States of America by counsel and in connection with its application for appeal from the final decree pronounced in the above-entitled cause on the 18th day of March, 1915, presents in open court the following assignment of errors upon which it will rely upon said appeal.

The court erred.

I.

In dismissing the bill.

II.

In failing to adjudge that the United Shoe Machinery Company of New Jersey is a combination in restraint of interstate and foreign trade and commerce and that it has attempted and is attempting in combination with other persons and corporations to monopolize and that it has monopolized part of the trade and commerce among the several States of the United States and with foreign nations.

III.

In failing to adjudge that the United Shoe Machinery Corporation is a combination in restraint of interstate and foreign trade and commerce and that it has attempted and is attempting in combination with other persons and corporations to monopolize and that it has monopolized part of the trade and commerce among the several States of the United States and with foreign nations.

IV.

In refusing to decree that each of said defendant corporations be dissolved and a new condition brought about in harmony with and not repugnant to the law either as a consequence of the
1537 action of this court in determining an issue or in accepting a plan agreed upon; or, failing such dissolution, that each of said corporations be restrained from engaging in interstate or foreign commerce.

V.

In refusing to adjudge that the holding of stock by any of the denfendant corporations in other corporations as alleged in part seven of the bill herein is illegal, and in refusing to enjoin and

restrain said corporation from continuing to hold or own such shares and from exercising any rights in connection therewith.

VI.

In refusing to adjudge that the acquisitions set out and described in part VII of the petition herein, or any of them, were acts in unlawful restraint of interstate and foreign commerce and done in pursuance of a purpose to monopolize part of the interstate and foreign commerce in machinery adapted to the manufacture of shoes and were illegal.

VII.

In refusing to adjudge that the lease and license agreements devised and used by the defendants, as described in part five of the bill, and agreements containing like or similar provisions are, in respect of the restrictive provisions therein contained, illegal.

VIII.

In refusing to enjoin and restrain defendants and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, from enforcing or attempting to enforce any rights
existing or claimed under and by virtue of the restrictive
1538 provisions of such lease and license agreements.

IX.

In refusing to enjoin and restrain the defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, from making in the future or insisting upon or enforcing any contracts, arrangements, agreements, or requirements with their customers relating to the loan, lease, or purchase from the defendants of machinery, mechanism, tools, or devices under which it is a condition of said agreements or contracts of lease, purchase, or loan that the defendants shall not acquire by lease, loan, or purchase from competitors of the defendants machines of similar character or shall not use machinery, mechanism, tools, or devices obtained upon loan, lease, or purchase from the defendants in the manufacture of shoes made in part with the use of machinery obtained from competitors of the defendants.

X.

In refusing to enjoin and restrain the defendants, and each of them, their officers, directors, stockholders, agents, and servants, and each of them, from making discounts or granting to boot and shoe

manufacturers rebates, either by way of reduction, of royalties, or by any other scheme or device whatever, as an inducement to persuade such manufacturers to use exclusively machines, mechanisms, tools, or devices owned or controlled by the defendants.

1539

XI.

In refusing to allow the motion of the United States to be permitted to amend its bill in the manner and under the circumstances disclosed by the record.

XII.

In refusing to adjudge that the combinations, contracts, and conspiracies described in the bill are illegal and that all acts done in furtherance of the same are in violation of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and to enjoin and restrain the defendants, and each of them, their officers, directors, stockholders, agents, and servants, and each of them, from doing any act in pursuance of or for the purpose of carrying out the same.

XIII.

In refusing to enter a decree in favor of the United States of America upon its petition herein and to order that its costs shall be paid by the defendants.

GEORGE W. ANDERSON,
United States Attorney.
H. LARUE BROWN,
Special Assistant to the Attorney General.

1540

Supreme Court of the United States.

Appeal from the District Court of the United States for the District of Massachusetts, in case entitled in that court,

THE UNITED STATES OF AMERICA
v.
UNITED SHOE MACHINERY COMPANY, OF New Jersey et al.

No. 301, Equity Docket (C. C. 911).

Order of enlargement of time for docketing case and filing record, May 17, 1915.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof with the clerk of this court be enlarged to and including Friday, October 1, 1915.

FREDERIC DODGE,
U. S. Circuit Judge.

1541 *Plaintiff's praecipe.*

[Filed September 7, 1915.]

To the clerk of said court:

The United States of America desires the following portions of the record of the above-entitled cause to be incorporated into the transcript on its appeal to the Supreme Court of the United States, namely, the petition of the plaintiff without the exhibits attached thereto, the answers of the several defendants, the replications of the plaintiff, the plaintiff's bill of particulars, the defendants' objections thereto, and all motions, orders of court, and the final decree filed in said cause; all the physical exhibits, the exhibits printed in Volumes IX, X, and XII of the Record as printed for the District Court, the testimony taken before the examiner as it appears in Volume V of said printed Record, and the evidence taken before the court as it is stated in narrative form in the transcript herewith lodged; also this praecipe, notice to counsel of its lodgment with the clerk, and of the time and place when the plaintiff will ask the court to approve plaintiff's statement of the evidence which it desires the court to approve and make a part of the record, and the return of the officer showing service of said praecipe and notice, together with the petition of the United States for appeal and its assignment of errors, and all orders, citations, and decrees of said district court made in connection therewith and in furtherance thereof.

GEORGE W. ANDERSON,
United States Attorney.
C. J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.

1542 BOSTON, *September 7th, 1915.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I hereby certify that I have this day made diligent search for Charles F. Choate, Esq., counsel for the within-named United Shoe Machinery Company of New Jersey and others, at his office at 30 State Street, said Boston, but was unable to find him, or his whereabouts in said district. Accordingly I have, by direction of Leo A. Rogers, Esq., Assistant U. S. Attorney, left at the office of the said Charles F.

Choate, at said 30 State Street, an attested copy of this precept in the hands of Miss Mary F. Hannigan, his secretary.

JOHN J. MITCHELL, *U. S. Marshal.*
By CHARLES A. BANCROFT, *Deputy.*

Fees:
Service, $2.00
Travel, .06
—— $2.06

1543 *Copy of notice of filing of præcipe and lodgment of statement in narrative form of evidence.*

[Filed September 7, 1915.]

BOSTON, *September 7, 1915.*

CHARLES F. CHOATE, JR., Esq.,
30 State St., Boston, Mass.

SIR: You are hereby notified that the United States has this day filed its præcipe with the clerk of the United States District Court for the District of Massachusetts in case #301 in equity, United States of America v. United Shoe Machinery Company of New Jersey, and others, indicating the portions of the record to be incorporated into its transcript on its appeal, and has lodged with the clerk of said court a statement in narrative form of the evidence which it desires to be included in said transcript on its appeal.

You are further notified that on Friday, September 18th, 1915, at ten o'clock a. m., or as soon thereafter as counsel can be heard, at Boston, in said District of Massachusetts, the United States will ask said District Court to approve said statement.

Respectfully,
For the United States Attorney:
(Signed) LEO A. ROGERS,
Assistant U. S. Attorney.

A true copy:
Attest:
CHARLES A. BANCROFT,
Deputy U. S. Marshal.

1544 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

BOSTON, *September 7th, 1915.*

I hereby certify that I have this day made diligent search for the within-named Charles F. Choate, Esq., at his office at 30 State

Street, said Boston, but was unable to find him or his whereabouts in said district; accordingly I have, by direction of Leo A. Rogers, Esq., assistant U. S. attorney, left at the office of the said Charles F. Choate, at said 30 State Street, the original, of which the within is an attested copy, in the hands of Miss Mary F. Hannigan, his secretary.

JOHN J. MITCHELL, *U. S. Marshal*,
By CHARLES A. BANCROFT, *Deputy*.

Fees:
Service, $2.00.

1545 *Motion for extension of time.*

[Filed September 10, 1915.]

And now come the defendants in the above-entitled action and move that the time for incorporating additional portions of the record for filing objections and amendments proposed by the defendants and for approving the statement of the evidence be extended to January 1, 1916.

CHAS. F. CHOATE, Jr.,
Attorney for the Defendants.

Order extending time for incorporating additional portions of the record.

[September 11, 1915.]

DODGE, J. On defendants' motion, filed September 10, 1915, for extension of the time for incorporating additional portions of the record for filing objections and amendments proposed by defendants and for proving the statement of the evidence, it being at present uncertain on what day the entire court can be got together; it is hereby, after hearing the parties, counsel for the petitioner not assenting but objecting thereto, ordered as follows:

For good cause shown, that said time be extended as requested by said motion to January 1, 1916; this order to be without prejudice to the right of the petitioner to apply to the full court for such other or different limitation of said time as it may consider desirable.

By the court:

WILLIAM NELSON, *Clerk*.

1546 Supreme Court of the United States.

Appeal from the District Court of the United States for the District of Massachusetts, in case entitled in that court,

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF New Jersey, et al.	No. 301, Equity Docket (C. C. 911).

Order of enlargement of time for docketing case and filing record, September 11, 1915.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof with the clerk of this court be enlarged to and including Saturday, January 15, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1547 *Petition for limitation of time for filing objections to statement of evidence.*

[Filed September 27, 1915.]

Now comes the petitioner and moves the court to reduce and restrict the time heretofore granted by his honor Judge Dodge to the defendants for the preparation and submission by them of objections or amendments to the statement of the evidence prepared by the petitioner and heretofore filed in said cause, so that the defendants will be required to present and submit such objections and amendments on or before the first day of November, 1915, and petitioner hereby requests that this motion be heard and passed upon by the same court which tried the case, to wit, the court organized under the expediting act for that purpose.

UNITED STATES OF AMERICA,
By GEORGE W. ANDERSON,
United States Attorney.

C. J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.

1548 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF New Jersey, et al.	Equity Docket, No. 301 (C. C. 911).

Order of enlargement of time for docketing case and filing record, September 30, 1915.

For good cause shown it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Saturday, January 15, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1549 *Docket entry of October 13, 1915.*

October 13, 1915. PUTNAM, DODGE & BROWN, JJ. Heard on petition for limitation of time for filing objections to statement of evidence; ordered, against objections of the United States, that order entered September 11, 1915, by Dodge, J., stand.

1550 *Defendants' Praecipe for portions of the record for the transcript upon appeal.*

[Filed December 24, 1915.]

To Honorable William Nelson, clerk of the United States District Court, District of Massachusetts.

The defendants desire the following additional portions of the record of the above-entitled cause to be incorporated into the transcript of the record for the appeal allowed in this cause to the Supreme Court of the United States, namely:

(1) The petition, without the exhibits attached thereto.
(2) The answers of the several defendants.
(3) The replications of the petitioner.
(4) Petitioner's motion for leave to dismiss as to certain defendants, filed April 16, 1912.
(5) The order of the court upon said motion, April 16, 1912.
(6) The certificate of expedition, filed May 20, 1912.

(7) Defendants' motion for a bill of particulars, filed May 28, 1913.

(8) Petitioner's response to defendants' motion for a bill of particulars, under Section VI of the petition, filed June 25, 1913.

(9) Order of court directing the taking of testimony, with respect to patents, before an examiner, June 27, 1913.

(10) Stipulation, filed July 23, 1913.

(11) Order extending time for taking testimony before
1551 examiner under order dated June 27, 1913, August 8, 1913.

(12) Order extending time for taking testimony before examiner under order dated June 27, 1913, September 12, 1913.

(13) Petitioner's two motions to strike out, filed December 2, 1913.

(14) List of parts of exhibits to be specifically relied upon by petitioner, etc., filed December 9, 1913.

(15) Stipulation as to objections to testimony and further examination before special examiner, made January 14, 1914, filed January 19, 1914.

(16) Request for leave to amend petition, filed January 14, 1914.

(17) Objections of defendants to motion of the United States to amend its bill, made January 14, 1914, filed February 3, 1914.

(18) Order of court, February 4, 1914.

(19) Order of court, February 10, 1914.

(20) Opinions of Putnam and Dodge, circuit judges, and Brown, district judge, filed March 18, 1915.

(21) Final decree, entered May 14, 1915.

(22) Petition for appeal and assignment of errors by the United States, filed May 15, 1915.

(23) Order of court, May 15, 1915.

(24) Praecipe, filed by petitioner September 7, 1915.

(25) Copy of notice of filing of praecipe and lodgment of statement in narrative form of the evidence, filed by petitioner September 7, 1915.

1552 (26) Motion of defendants for extension of time, filed September 10, 1915.

(27) Order of court, September 11, 1915.

(28) Order of court, September 30, 1915.

(29) Abstract of the evidence which is lodged herewith incorporating defendants' objections and amendments to the abstract of the evidence before the court, filed by petitioner September 7, 1915, and the additional portions of the record which defendants desire to have incorporated into the transcript; and also incorporating an abstract of the testimony in Volume V of the record in the district court.

(30) This praecipe, notice to counsel of its lodgment with the clerk of said court, and the return of the officer showing service of said praecipe and notice.

(31) Any further orders which may be made by the district court.

(32) The exhibits which were printed in Volumes IX, X, and XII of the district court record, with the exception of those exhibits which appear in full in said abstract of the evidence, namely, defendants' Exhibits Numbered 105, 211, 215, 216, 218, 225, 226, 230, 230A, 234, 249, 251, 252, 253, 254, 259, 260, 261, 263, 264, 265, 266, 267, 270, 271, 272, 273, 274, 275, 331, 333, 334, 341, 342; and in lieu of each of these last-named exhibits it is requested that a page be substituted stating the title of the exhibit and the page in said abstract where said exhibit appears.

(33) All the physical exhibits, namely:

Plaintiff's Exhibits Numbered 162, 190, 193, 194, 220, 243, 244, 249, 251A, 251B, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 266, 268, 280, 281, 282, 283, 284, 285, 286, 287, 288.

1553 Defendants' Exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 72, 73, 76, 100, 102, 103, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 241, 255, 256, 257, 268, 276, 277, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 335, 340, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359.

FREDERICK P. FISH,
CHAS. F. CHOATE, Jr.,
MALCOLM DONALD,
Solicitors for Defendants.

DECEMBER 24, 1915.

If and in so far as the within præcipe is properly directed to me as United States attorney for the District of Massachusetts service thereof is hereby acknowledged, waiving, however, no objection either as to form or substance or as to the time of the return thereof, counsel in actual charge of said case for the Government being C. J. Smyth, Esq., of Omaha, Nebraska, and H. L. Brown, now commorant in Washington, D. C.

GEORGE W. ANDERSON.

1554 BOSTON, *December 24, 1915.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I hereby certify that I have this day served the within præcipe on the Hon. U. S. district attorney, George W. Anderson, by giving

to him in hand an attested copy of the within defendants' præcipe, at Boston, in said district.

JOHN J. MITCHELL,
U. S. Marshal,
By JOSEPH A. MURPHY,
Deputy.

Fees:
Service, $2.00
Travel, .06
$2.06

1555 *Notice of filing of defendants' præcipe and abstract of evidence and marshal's return of service.*

[Filed December 24, 1915.]

To HONORABLE GEORGE W. ANDERSON,
United States attorney, Boston, Massachusetts:

You are hereby notified that on December 24th, 1915, the defendants filed, with the clerk of said court, defendants' præcipe for portions of the record for the transcript upon appeal, of which a true copy is hereto attached; and lodged with the clerk of said court their abstract of the evidence in this cause, incorporating their objections and amendments to the abstract of the evidence before the court, filed by petitioner September 7, 1915, and the additional portions of the record which they desire to have incorporated into the transcript; and also incorporating an abstract of the testimony in Volume V of the record in the District Court.

You are further notified that on Tuesday, January 4th, 1916, at ten o'clock a. m., or as soon thereafter as counsel can be heard, defendants will ask said District Court to approve said abstract of the evidence.

FREDERICK P. FISH,
CHAS. F. CHOATE, Jr.,
MALCOLM DONALD,
Solicitors for Defendants.

1556 BOSTON, *December 24th, 1915.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I hereby certify that I have served the within notice on the within named George W. Anderson, U. S. attorney, by giving to him in hand an attested copy of the within notice at Boston in said district.

JOHN J. MITCHELL,
U. S. Marshal,
By JOSEPH A. MURPHY,
Deputy.

Fees:
Service, $2.00.

1557 *Defendants' motion to approve abstract of testimony.*

[Filed January 4, 1916.]

Now come the defendants and move this court to approve the abstract of the evidence in the above-entitled case, filed by the defendants with their præcipe.

By their solicitors:

FREDERICK P. FISH,
CHAS. F. CHOATE, Jr.,
MALCOLM DONALD.

1558 *Docket entry of January 4, 1916.*

January 4, 1916. PUTNAM, DODGE & BROWN, JJ: Heard on question of make-up of appeal record. Defendants' written motion to approve their abstract of evidence filed. Heard and action postponed.

1559 *Motion to extend time for docketing appeal.*

[Filed January 12, 1916.]

The United States moves that the time for docketing in the Supreme Court of the United States its appeal in the above-entitled case be extended to March 15, 1916.

GEORGE W. ANDERSON,
United States Attorney.
H. LARUE BROWN,
Special Assistant to the Attorney General.

Defendants assent to allowance of this motion.

CHAS. F. CHOATE, Jr.,
For Defendants.

1560 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF New Jersey, et al.	Equity Docket, No. 301 (C. C. 911).

Order of enlargement of time for docketing case and filing record, January 12, 1916.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Wednesday, March 15, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1561 *Motion to extend time for docketing transcript of appeal.*

[Filed March 11, 1916.]

Now comes the United States and moves that the time for docketing in the Supreme Court of the United States its appeal in the above-entitled cause be extended to May 1, 1916.

GEORGE W. ANDERSON,
United States Attorney.
C. J. SMYTH,
H. LARUE BROWN,
Special Assistant to the Attorney General.

The defendants being asked by the United States to grant further accommodation in point of time, will not oppose the granting of this motion.

By their atty.,

CHAS. F. CHOATE, JR.

1562 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, et al.	Equity Docket, No. 301 (C. C. 911).

Order of enlargement of time for docketing case and filing record, March 11, 1916.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Monday, May 1, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1563 *Motion to extend time for docketing transcript of appeal.*

[Filed April 28, 1916.]

Now comes the United States and moves that the time for docketing in the Supreme Court of the United States its appeal in the above-entitled cause be extended to June 1, 1916.

GEORGE W. ANDERSON,
United States Attorney.
C. J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.

At the request of the United States the defendants assent to the allowance of this motion.

C. F. CHOATE, JR., *for Defendants.*

1564 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, et al.	Equity Docket, No. 301 (C. C. 911).

Order of enlargement of time for docketing case and filing record, April 28, 1916.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Thursday, June 1, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1565 *Motion to extend time for docketing transcript of appeal.*

[Filed May 31, 1916.]

Now comes the United States and says that since October 1, 1915, on which date the time for docketing the appeal of the United States in the above-mentioned cause was first extended, the parties, by their counsel, have been in repeated conference for the purpose of reaching an agreement upon the form in which the 4,979 printed pages of the testimony and the four volumes of exhibits of the record in this case as made up for the District Court shall be presented to the Supreme Court; that the work has proceeded with all the expedition reasonably possible under the circumstances and by far the greater portion of said testimony has become the subject of such agreement and has been stated in accordance with the same, but the parties have not yet completed the labor of reaching an agreement upon the entire record. In order, therefore, to afford time to reach or to attempt to reach such complete agreement, the United States moves that the time for docketing its appeal be extended until July 1, 1916.

GEO. W. ANDERSON,
United States Attorney.
H. LARUE BROWN,
Special Assistant to the Attorney General.

1566 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY et al.	Equity docket, No. 301 (C. C. 911).

***Order** of enlargement of time for docketing case and filing record, May 31, 1916.*

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Saturday, July, 1, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

Defendants assent to entry of this order by their atty.

CHAS. F. CHOATE, Jr.

1567 *Substituted praecipe of United States.*

[Filed June 19, 1916.]

To the clerk of said court:

Now comes the United States of America, petitioner and appellant in the above-entitled case, and substitutes the following for the praecipe heretofore filed in said case on September 7th, 1915, that is to say:

The United States of America desires the following portions of the record of the above-entitled case to be incorporated in the transcript on its appeal of said case to the Supreme Court of the United States, namely:

(1) The petition of the United States without the exhibits thereto.

(2) The answers of the several defendants.

(3) The replications of the United States.

(4) Expediting certificate filed May 20th, 1912.

(5) Protest of United States against private hearings filed May 22nd, 1912.

(6) Order with respect to private hearings filed August 28th, 1912.

(7) Motions of the United States to strike out evidence filed December 2nd, 1913, and order thereupon.

(8) Motion of defendants for bill of particulars filed May 28th, 1913.

(9) Bill of particulars filed June 25th, 1913.

(10) Objections thereto filed.

1568 (23) Order of Judge Dodge that defendants be given until January 1st to file their objections and suggestions of amendments to the reduced statement of facts of the evidence filed by the United States.

(24) Order of Circuit Judges Putnam and Dodge and District Judge Brown approving the order of Judge Dodge filed October 13th, 1915.

(25) Notice by the defendants to the United States of the filing of their objections, etc., filed December 24th, 1915.

(26) Order postponing hearing on last-mentioned motion filed January 4th, 1916.

(27) Order extending time for docketing case on appeal filed January 12th, 1916.

(28) Order extending time for docketing case on appeal filed March 11th, 1916.

(29) Order extending time for docketing case on appeal filed April 28th, 1916.

(30) Order extending time for docketing case on appeal filed May 31st, 1916.

(31) The testimony approved by the court June 19, 1916, and filed as a part of the record for the purposes of the appeal.

(32) All of the physical exhibits introduced in the course of the trial.

1569 (11) Requests of the United States for leave to amend petition and the amendments requested filed January 14th, 1914.

(12) Order denying requests of the United States for leave to amend, filed February 4th, 1914.

(13) Opinions of the judges, filed March 18th, 1915.

(13a) Final decree, filed May 14th, 1915.

(14) Petition of the United States for appeal and assignment of errors, filed May 15th, 1915.

(15) Order allowing petition for appeal, filed May 15th, 1915.

(16) Citation and proof of service thereof, filed May 15th, 1915.

(17) Order enlarging time for docketing case and preparing reduced statement of the evidence, filed May 15, 1915.

(18) Praecipe of the United States filed September 7th, 1915, and return of service thereof, notice to counsel of its lodgment, and of time of place at which United States would ask court to approve its statement of the evidence and proof of service thereon.

(19) Motion for extension of time, filed September 10th, 1915.

(20) Order extending time, filed September 11th, 1915.

(21) Order enlarging time for docketing case, filed September 11th, 1915.

(22) Petition for limitation of time, filed by United States September 27, 1915.

1570 (33) This substituted praecipe, filed June 19th, 1916.

(34) Stipulation of parties filed 19th of June, 1916.

(35) Order of court approving evidence and making it a part of record, filed June 19th, 1916.

THE UNITED STATES OF AMERICA,
By GEO. W. ANDERSON,
United States Attorney.
CONSTANTINE J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.

1571 *Stipulation.*

[Filed June 19, 1916.]

It is hereby stipulated and agreed by and between the parties to the above entitled action that the District Court may approve as part of the evidence in said case Volumes V, IX, X, and XII, inclusive, of the evidence and exhibits, as the same have been printed for the use of the District Court in said case and identified by the signatures of H. LaRue Brown and Nelson W. Howard on the first and last page of each volume thereof.

It is also stipulated and agreed that the typewritten manuscript consisting of 1,229 pages in three volumes and identified by the signatures of H. LaRue Brown and Nelson W. Howard on the first and last pages of each volume thereof comprises the testimony of all the witnesses who testified in open court and that the statement of the same contained in said manuscript is true, complete, and properly prepared and may be approved by the court.

It is further stipulated that the evidence contained in said Volumes V, IX, X, and XII, together with that in said typewritten manuscript, and the physical exhibits now on file with the clerk, constitute all the evidence taken in said case that is material or pertinent to the appeal from the decree therein, and the same, after Volumes V, IX, X, and XII, and said manuscript have been approved as aforesaid, shall be filed by the clerk as a part
1572 of the record in said case for the purposes of the appeal.

It is further stipulated and agreed that the clerk of the District Court shall send the original typewritten manuscript referred to in the preceding paragraph to the clerk of the Supreme Court of the United States as a part of the record in the case on appeal and that a printed copy of the same, when prepared by the clerk of said last mentioned court, may be substituted for the original manuscript in the files of the clerk of the District Court.

It is further stipulated and agreed that the clerk of the District Court shall certify as the record on appeal said Volumes V, IX, X, and XII, said typewritten manuscript verified as stated above, and said physical exhibits, and all papers not included in the above which are named in the praecipes or substitute praecipes of both parties, it being understood that no papers shall be duplicated in the transcript of the record.

It is further stipulated and agreed that the approvals aforesaid by the court, Judge Dodge presiding, shall have the same force and effect as if Judge Putnam and Judge Brown had been present and participated in said approvals.

GEO. W. ANDERSON,
United States Attorney.
CONSTANTINE J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.
CHAS. F. CHOATE, JR.,
Attorney for Defendants and Appellees.

1573 *Order June 19, 1916.*

Pursuant to the stipulation of the parties filed in this case on the 19th day of June, 1916, it is hereby ordered that the foregoing four (4) printed volumes numbered, respectively, V, IX, X, and XII of the evidence and exhibits, as the same have been printed for the use of the District Court in this case and identified by the signatures of H. LaRue Brown and Nelson W. Howard on the first and last pages of each volume thereof, and the foregoing typewritten manuscript consisting of 1,229 pages in three volumes and identified by the signatures of H. LaRue Brown and Nelson W. Howard on the first and last pages of each volume thereof, are hereby approved as being a true, complete, and properly prepared statement of all the evidence received or offered on the trial of said case, save the physical exhibits now on file with the clerk of said court, that is material or pertinent to the appeal from the decree therein, and of all rulings of the court with respect to said evidence, and that said four (4) Volumes V, IX, X, and XII, said typewritten manuscript, and said physical exhibits are hereby approved as all the evidence in said case material and pertinent as aforesaid, and are made a part of the record in said case for the purposes of the appeal.

By the court:

FREDERIC DODGE,
United States Circuit Judge.

The volumes referred to in this order accompany this record, being made up of seven volumes, each certified as appurtenant to this order.

1574 *Defendants' substitute praecipe for portions of the record for the transcript upon appeal.*

[Filed June 21, 1916.]

To Honorable William Nelson, Clerk of the United States District Court, District of Massachusetts:

The defendants desire the following additional portions of the record of the above entitled cause to be incorporated into the transcript of the record for the appeal allowed in this cause to the Supreme Court of the United States, namely:

(1) The petition, without the exhibits attached thereto.

(2) The answers of the several defendants.

(3) The replications of the petitioner.

(4) Petitioner's motion for leave to dismiss as to certain defendants, filed April 16, 1912.

(5) The order of the court upon said motion, April 16, 1912.

(6) Motion for appointment of a special examiner, filed April 20, 1912.

(7) Notice to take testimony, filed April 26, 1912.

(8) Docket entry, April 26, 1912, regarding notice to take testimony.

(9) Order appointing special examiner, entered April 26, 1912.

1575 (10) The certificate of expedition, filed May 20, 1912.

(11) Order that all further proceedings before the examiner cease until further order of court, entered May 22, 1912.

(12) Order of court designating three judges to sit in the case, entered May 28, 1912.

(13) Docket entry, August 28, 1912, as follows: Brown, J. (Colt, J., concurring; Putnam, J., sat at hearing but did not participate in this opinion, having previously expressed an opinion on the question as a single judge): Opinion, the examiner will not, without the consent of both parties, allow the attendance of persons other than those mentioned in rule 67. Opinion filed and entered.

(14) Opinion of the court, filed August 28, 1912.

(15) Docket entry, March 18, 1913, as follows: Putnam, Dodge & Brown, JJ. Dodge, J., sitting under the statute in place of Colt, J., who has resigned. Order striking out order appointing Charles K. Darling special examiner.

(16) Motion of petitioner for appointment of special master, filed March 20, 1913.

(17) Application of petitioner for leave to withdraw motion for appointment of special master.

(18) Docket entry, March 26, 1913, as follows: Putnam, Dodge & Brown, JJ. Ordered, there being no objection, the application of

the United States for leave to withdraw its motion for appointment of special master is allowed without prejudice. (Entered.)

(19) Petitioner's motion for hearing before court, filed May 13, 1913.

(20) Petitioner's alternate motion for hearing before an examiner, filed May 13, 1913.

(21) Docket entry, May 13, 1913, as follows: Putnam, Dodge & Brown, JJ. On motion for hearing of case in open court, ordered that case be assigned for hearing on Tuesday, May 20, 1913, at 10 a. m. (Entered in order book and journal.)

(22) Defendants' motion for a bill of particulars, filed May 28, 1913.

(23) Petitioner's response to defendants' motion for a bill of particulars, under Section VI of the petition, filed June 25, 1913.

(24) Order of court directing the taking of testimony, with respect to patents, before an examiner, entered June 27, 1913.

(25) Stipulation, filed July 23, 1913.

(26) Order extending time for taking testimony before examiner under order dated June 27, 1913, entered August 8, 1913.

1576 (27) Order extending time for taking testimony before examiner under order dated June 27, 1913, entered September 12, 1913.

(28) Stipulation in re printing of petitioner's exhibit 162, filed September 20, 1913.

(29) Petitioner's two motions to strike out, filed December 2, 1913.

(30) List of parts of exhibits to be specifically relied upon by petitioner, etc., filed December 9, 1913.

(31) Stipulation as to objections to testimony and further examination before special examiner, made January 14, 1914, filed January 19, 1914.

(32) Request for lease to amend petition, filed January 14, 1914.

(33) Objections of defendants to motion of the United States to amend its bill, made January 14, 1914, filed February 3, 1914.

(34) Order of court, entered February 4, 1914.

(35) Order of court, entered February 10, 1914.

(36) Opinions of Putnam and Dodge, circuit judges, and Brown, district judge, filed March 18, 1915.

(37) Final decree, entered May 14, 1915.

(38) Petition for appeal and assignment of errors by the United States, filed May 15, 1915.

(39) Order of court, entered May 15, 1915.

(40) Praecipe, filed by petitioner September 7, 1915.

(41) Copy of notice of filing of praecipe and lodgment of statement in narrative form of the evidence, filed by petitioner September 7, 1915.

(42) Motion of defendants for extension of time, filed September 10, 1915.

(43) Order of court, entered September 11, 1915.

(44) Order of court entered September 30, 1915.

(45) Order of court, entered October 13, 1915.

(46) Defendants' praecipe for portions of the record for the transcript upon appeal and return of service thereof, filed December 24, 1915.

(47) Notice of filing of defendants' praecipe and return of service thereof, filed December 24, 1915.

(48) Defendants' motion to approve abstract of evidence, filed January 4, 1916.

(49) Docket entry, January 4, 1916, as follows: Putnam, Dodge & Brown, JJ. Heard on question of make-up of appeal record. Defendants' written motion to approve their abstract of evidence filed. Heard and action postponed. (Entered.)

1577 (50) Petitioner's motion to extend time for docketing appeal, with assent by defendants, filed January 12, 1916.

(51) Order of enlargement of time for docketing case and filing record, entered January 12, 1916.

(52) Petitioner's motion to extend time for docketing transcript of appeal, with assent by defendants, filed March 11, 1916.

(53) Order of enlargement of time for docketing case and filing record, entered March 11, 1916.

(54) Petitioner's motion to extend time for docketing transcript of appeal, with assent by defendants, filed April 28, 1916.

(55) Order of enlargement of time for docketing case and filing record, entered April 28, 1916.

(56) Petitioner's motion to extend time for docketing transcript of appeal, filed May 31, 1916.

(57) Order of enlargement of time for docketing case and filing record, entered May 31, 1916, with defendants' assent thereto.

(58) Stipulation, filed June 19, 1916.

(59) Order, entered June 19, 1916.

(60) Abstract of the evidence before the court, filed June 19, 1916.

(61) The evidence taken before the examiner, as printed in Volume V of the District Court record.

(62) The exhibits as printed in Volumes IX, X, and XII of the District Court record.

(63) All the physical exhibits, namely:

Plaintiff's exhibits numbered 162, 190, 193, 194, 220, 243, 244, 249, 251A, 251B, 252, 253, 254, 255, 256, 257, 258 259, 260, 261, 262, 266, 267, 268, 280, 281, 282, 283, 284, 285, 286, 287, 288.

Defendants' exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 72,

73, 76, 100, 102, 103, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 241, 255, 256, 257, 268, 276, 277, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 335, 340, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359.

1578 (64) This substitute praecipe.

(65) Any further orders which may be made by the District Court.

(Signed) FREDERICK P. FISH,
MALCOLM DONALD,
CHAS. F. CHOATE, JR.,
For Defendants.

1579 *Citation on appeal.*

United States of America, ss:

The President of the United States to United Shoe Machinery Company, of New Jersey, a corporation organized under the laws of New Jersey, carrying on business in the district of Massachusetts, with its offices and place of business at Boston, Mass.; United Shoe Machinery Corporation, a corporation organized under the laws of New Jersey, with its offices and place of business at Boston, Mass.; United Shoe Machinery Company, of Maine, a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.; United Shoe Repairing Machine Company, a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.; United-Xpedite Finishing Company, a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.; O. A. Miller Treeing Machine Company, a corporation organized under the laws of Maine, with its offices and place of business at Brockton, Mass.; W. W. Cross & Company (Inc.), a corporation organized under the laws of Maine, with its offices and place of business at Brockton, Mass.; Ross-Moyer Manufacturing Company, a corporation organized under the laws of Ohio, with its offices and place of business at Cincinnati, Ohio; J. K. Krieg Company, a corporation organized under the laws of New York, with its offices and place of business at New York City; Booth Brothers Company, a corporation organized under the laws of New York,

with its offices and place of business at Rochester, N. Y.; Ellis Lacer Company, a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.; Sidney W. Winslow, a resident of the State of Massachusetts; William Barbour, a resident of the State of New York; George W. Brown, Wallace F. Robinson, Edward P. Hurd, John H. Connor, Louis A. Coolidge, and Edwin P. Brown, residents of the State of Massachusetts; Frank L. Babbott, a resident of the State of New York; Henry B. Endicott, a resident of the State of Massachusetts; Edmund LæB. Gardner, a resident of the State of New Jersey; John H. Hanan, a resident of the State of New York; Elmer P. Howe, Joseph C. Kilham, and George E. Keith, residents of the State of Massachusetts; Rudolph Matz, a resident of the State of Illinois; Charles G. Rice, a resident of the State of Massachusetts; Alfred R. Turner, a resident of the State of New Jersey; Samuel Weil, a resident of the State of New York; Frank Wood, a resident of the State of Massachusetts; William Woodward, a resident of the State of New York; Edward N. Chase; and Harold G. Donham, a resident of the State of Massachusetts, greeting:

1580 You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., on the fourteenth day of June next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein the United States of America and you are appellees, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, United States circuit judge, this fifteenth day of May, in the year of our Lord one thousand nine hundred and fifteen.

FREDERIC DODGE,
U. S. Circuit Judge.

1581 *Acceptance of service on citation on appeal.*

I accept service of the within process for United Shoe Machinery Company.

CHAS. F. CHOATE, Jr., *Atty.*

We accept service of the within process for United Shoe Machinery Co. of N. J., United Shoe Machinery Corp., United Shoe Machinery Co. of Me., United Shoe Repairing Mach. Co., United Xpedite Finishing Co., O. A. Miller Treeing Machine Co., W. W. Cross & Co. (Inc.), Ross-Moyer Mfg. Co., J. K. Krieg Co., Booth Bros. Co., Ellis Lacer Co., Sidney W. Winslow, William Barbour,

Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Frank L. Babbott, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Wm. Woodward, Edward N. Chase, Harold G. Donham.

HAROLD G. DONHAM,
WALTER BATES FARR,
Attys.

1582 *Clerk's certificate.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, William Nelson, clerk of the District Court for the District of Massachusetts, certify that the foregoing are true copies of the papers indicated by the praecipes of the parties, as approved by the court, as being the portions of the record of said district court to be included in the record on the appeal of the United States, in the cause in said district court determined, entitled—

THE UNITED STATES OF AMERICA, plaintiff, *v.* UNITED SHOE MACHINERY COMPANY, OF New Jersey, et al., defendants.	No. 301, Equity Docket. (#911, C. C.)

together with the original citation issued upon the appeal of the plaintiff, with the acceptances of service thereon.

In testimony whereof I hereto set my hand and affix the seal of said district court, at Boston, in said district, this twenty-sixth day of June, A. D. 1916.

[SEAL.] WILLIAM NELSON, *Clerk.*

1583 In the Supreme Court of the United States.

UNITED STATES OF AMERICA
v.
UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.

Stipulation as to printing of record.

It is hereby stipulated and agreed by counsel for the respective parties that the clerk of the Supreme Court in printing the abstract

of the testimony in the above-entitled cause may number the lines on each page of said abstract.

JNO. W. DAVIS,
Solicitor General.
H. LARUE BROWN,
Special Assistant to the Attorney General.
CHAS. F. CHOATE, JR.,
For Defendants.

(Indorsement on cover:) File No. 25375. Massachusetts, D. C. U. S. Term No. 545. The United States, appellant, vs. United Shoe Machinery Company, of New Jersey, et al. Filed July 1st, 1916. File No. 25375.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

Stipulation.

It is hereby stipulated and agreed that a copy of the expediting certificate in the above-entitled cause may be printed by the clerk upon a separate sheet and attached to Volume I of the record in this cause.

JNO. W. DAVIS,
Solicitor General.
CHAS. F. CHOATE, JR.,
Solicitor for the Appellees.

(Indorsed:) In the Supreme Court of the United States. October term, 1916. No. 545. The United States, appellant, vs. United Shoe Machinery Company of New Jersey et al. Stipulation. Office of the clerk, Supreme Court, U. S. Received Jan. 15, 1917.

[Copy.]

In the District Court of the United States for the District of Massachusetts.

UNITED STATES OF AMERICA, PETITIONER, *v.* UNITED SHOE MACHINERY COMPANY OF New Jersey, and others, defendants.	Equity.

Certificate of Attorney General for speedy hearing under act of Congress of February 11, 1903.

(Filed May 20, 1912.)

the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the United States against the

United Shoe Machinery Company of New Jersey, and others, under the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and that said suit is in my opinion a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,'" approved February 11, 1903, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the first circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest practicable date before not less than three judges of said circuit, as is provided by the said act of February 11, 1903.

GEORGE W. WICKERSHAM,
Attorney General.

WASHINGTON, D. C.

(Indorsed:) No. 301, Equity (#911, C. C.) United States of America *v.* United Shoe Machinery of New Jersey, and others. (Copy.) Certificate of Attorney General for speedy hearing under act of Congress of February 11, 1903. (Filed May 20, 1912.) (A true copy of the copy on file in the office of the clerk of the District Court.) H. LaRue Brown, counsel for petitioner. Chas. F. Choate, jr., counsel for respondents.

(Indorsed:) File No. 25375. Supreme Court U. S. October term, 1916. Term No. 545. The United States, appellant, *vs.* United Shoe Machinery Company et al. Stipulation of counsel and addition to record. Filed January 20, 1917.

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